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Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2015 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through April 3, 2015. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through April 3, 2015.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2015 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2015 supplement pamphlets and in the bound volumes of the Code.

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TITLE 25

FIRE PROTECTION AND SAFETY

Chap.

CHAPTER 2

REGULATION OF FIRE AND OTHER HAZARDS TO PERSONS AND PROPERTY GENERALLY

Sec.

25-2-6. State fire marshal; head of Safety Fire Division.

The Safety Fire Division of the office of the Commissioner of Insurance shall be headed by the state fire marshal appointed by the Commissioner. (Ga. L. 1972, p. 1015, § 2; Ga. L. 1986, p. 855, § 10; Ga. L. 2015, p. 5, § 25/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted "office of the Commissioner" for "office of Commissioner" in this Code section.

25-2-12. Adoption of state fire safety standards and enforcement; investigations; excuse from compliance with standards; interpretation of standards and granting variances therefrom by Commissioner.

(a)(1) The county governing authority in any county having a population of 100,000 or more, and the municipal governing authority in any municipality having a population of 45,000 or more, each as determined by the most recent decennial census published by the United States Bureau of the Census, and those municipalities pursuant to subsection (b) of this Code section shall adopt the state minimum fire safety standards adopted in the rules and regulations promulgated pursuant to this chapter, including all subsequent revisions thereof.

(2) With respect to those buildings and structures listed in Code Section 25-2-13, except for hospitals, nursing homes, jails, ambulatory health care centers, and penal institutions and except for buildings and structures which are owned and operated or occupied by the state, every such local governing authority shall be responsible for enforcing such fire safety standards within its jurisdiction and shall:

(A) Conduct fire safety inspections of existing buildings and structures;

(B) Review plans and specifications for proposed buildings and structures, issue building permits when plans are approved, and conduct fire safety inspections of such buildings and structures; and

(C) Issue permanent and temporary certificates of occupancy.

(3) Nothing in this subsection shall be construed so as to prohibit fire service personnel of any such local governing authority from making inspections of any state owned and operated or occupied building or structure listed in Code Section 25-2-13 and from filing reports of such inspections with the office of the Commissioner.

(4) Nothing in this subsection shall be construed so as to place upon any municipality, county, or any officer or employee thereof, the responsibility to take enforcement action regarding any existing building or structure listed in Code Section 25-2-13, if such building or structure was granted a certificate of occupancy pursuant to a waiver granted prior to January 1, 1982, and which was granted

pursuant to the recommendation of the engineering staff over the objection of the local authority having jurisdiction.

(5) Every such local governing authority shall have the authority to charge and retain appropriate fees for performing the duties required in subparagraphs (A) and (B) of paragraph (2) of this subsection. In cases where the governing authority of a municipality enforcing fire safety standards pursuant to this subsection contracts for the enforcement of fire safety standards, any municipal or county office or authority providing such enforcement shall not charge fees in excess of those charged in its own political subdivision for such enforcement.

(6) Every such local governing authority shall be responsible for investigating all cases of arson and other suspected incendiary fires within its jurisdiction, shall have the duties and powers authorized by Code Sections 25-2-27, 25-2-28, and 25-2-29 in carrying out such responsibility, and shall submit quarterly reports to the state fire marshal containing fire-loss data regarding all fires within its jurisdiction. The state fire marshal shall have the authority to initiate any arson investigation upon request of any such local governing authority and he shall provide assistance to the requesting authority regarding any of the duties and responsibilities required by this paragraph.

(7) No such local governing authority shall have the authority to grant any waiver or variance which would excuse any building, structure, or proposed plans for buildings or structures from compliance with the state minimum fire safety standards as adopted in the rules and regulations promulgated pursuant to this chapter.

(b) Municipalities having a population of less than 45,000 as determined by the most recent decennial census published by the United States Bureau of the Census may adopt the state minimum fire safety standards adopted in the rules and regulations promulgated pursuant to this chapter, including all subsequent revisions thereof. The municipal governing authority shall indicate its intention to adopt and enforce the state minimum fire safety standards by forwarding a resolution so indicating to the Commissioner. The municipality shall then adopt and enforce the state minimum fire safety standards as set forth in subsection (a) of this Code section.

(c) With respect to those buildings and structures listed in Code Section 25-2-13, in jurisdictions other than those jurisdictions covered under subsection (a) of this Code section, and with respect to every such hospital and every such building and structure owned and operated or occupied by the state, wherever located, the office of the Commissioner shall perform those duties specified in paragraph (2) of subsection (a) of

this Code section and shall perform all other duties required by this chapter.

(d) Except as specifically stated in this Code section, nothing in this Code section shall reduce or avoid the duties and responsibilities of the office of the Commissioner or the state fire marshal imposed by other Code sections of this chapter, other provisions of this Code, or any existing contract or agreement and all renewals thereof between the office of the Commissioner or the state fire marshal and any other state or federal government agency. Nothing in this Code section shall prohibit the office of the Commissioner, state fire marshal, or any local governing authority from entering into any future contract or agreement regarding any of the duties imposed under this Code section.

(e)(1) The office of the Commissioner shall be responsible for interpretations of the state minimum fire safety standards as adopted in the rules and regulations promulgated pursuant to this chapter.

(2) On the construction on existing buildings, local governments authorized to enforce the state minimum fire safety standards pursuant to subsection (a) and subsection (b) of this Code section, notwithstanding paragraph (7) of subsection (a) of this Code section, may grant variances from compliance with the state minimum fire safety standards as adopted in the rules and regulations promulgated pursuant to this chapter.

(3) On the construction on existing buildings not under the jurisdiction of a local government for purposes of paragraph (2) of this subsection, the Commissioner may grant variances from compliance with the state minimum fire safety standards as adopted in the rules and regulations promulgated pursuant to this chapter.

(4) On the construction of new buildings, the Commissioner, upon the written recommendation of the state fire marshal and the written request of the fire or building official responsible for enforcing the state minimum fire safety standards, may grant variances from compliance with the state minimum fire safety standards as adopted in the rules and regulations promulgated pursuant to this chapter in jurisdictions covered under subsection (a) of this Code section and jurisdictions other than those covered under subsection (a) of this Code section.

(5) Variances granted pursuant to paragraphs (2), (3), and (4) of this subsection shall be as nearly equivalent as practical to the standards required in this chapter. (Ga. L. 1949, p. 1057, § 6; Ga. L. 1981, p. 1779, § 3; Ga. L. 1982, p. 479, §§ 1, 4; Ga. L. 1984, p. 1160, § 2; Ga. L. 1985, p. 721, §§ 1, 2; Ga. L. 1992, p. 2186, § 2; Ga. L. 2015, p. 5, § 25/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted "subsection (a) of this Code section" for "subsection (a) of Code Section 25-2-12" at the end of subsection (b).

25-2-13. (For effective date, see note) Buildings presenting special hazards to persons or property; requirements; effect of rules, regulations, and fire safety standards issued before April 1, 1968; power of local governing authorities.

(a) As used in this Code section, the term:

(1) "Capacity" means the maximum number of persons who may be reasonably expected to be present in any building or on any floor thereof at a given time according to the use which is made of such building. The Commissioner shall determine and by rule declare the formula for determining capacity for each of the uses described in this Code section.

(2) "Historic building or structure" means any individual building or any building which contributes to the historic character of a historic district, so designated by the state historic preservation officer pursuant to rules and regulations adopted by the Board of Natural Resources, or as so designated pursuant to the provisions of Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act."

(3) "Landmark museum building" means a historic building or structure used as an exhibit of the building or structure itself which exhibits a high degree of architectural integrity and which is open to the public not fewer than 12 days per year; however, additional uses, original or ancillary, to the use as a museum shall be permitted within the same building subject to the provisions of paragraph (3) of subsection (b) of this Code section. Landmark museum buildings must be so designated by the state historic preservation officer pursuant to rules and regulations adopted by the Board of Natural Resources.

(b)(1) Certain buildings and structures, because of construction or use, may constitute a special hazard to property or to the life and safety of persons on account of fire or panic from fear of fire. Buildings constructed or used in the following manner present such a special hazard:

(A) Buildings or structures more than three stories in height; provided, however, that nothing in this Code section shall apply to any individually owned residential unit within any such building;

(B) Any building three or more stories in height and used as a residence by three or more families, with individual cooking and

bathroom facilities for each family; provided, however, that nothing in this Code section shall apply to any individually owned residential unit within any such building;

(C) Any building in which there are more than 15 sleeping accommodations for hire, with or without meals but without individual cooking facilities, whether designated as a hotel, motel, inn, club, dormitory, rooming or boarding house, or by any other name;

(D) Any building or group of buildings which contain schools and academies for any combination of grades one through 12 having more than 15 children or students in attendance at any given time and all state funded kindergarten programs;

(E) Hospitals, health care centers, mental health institutions, orphanages, nursing homes, convalescent homes, old age homes, jails, prisons, reformatories, and all administrative, public assembly, and academic buildings of colleges, universities, and vocational-technical schools. As used in this subparagraph, the terms "nursing homes," "convalescent homes," and "old age homes" mean any building used for the lodging, personal care, or nursing care on a 24 hour basis of four or more invalids, convalescents, or elderly persons who are not members of the same family;

(F) Racetracks, stadiums, and grandstands;

(G) Theaters, auditoriums, restaurants, bars, lounges, nightclubs, dance halls, recreation halls, and other places of public assembly having an occupant load of 300 or more persons, except that the occupant load shall be 100 or more persons in those buildings where alcoholic beverages are served;

(G.1) Churches having an occupant load of 500 or more persons in a common area or having an occupant load greater than 1,000 persons based on total occupant load of the building or structure;

(H) Department stores and retail mercantile establishments having a gross floor area of 25,000 square feet on any one floor or having three or more floors that are open to the public. For purposes of this subparagraph, shopping centers and malls shall be assessed upon the basis of the entire area covered by the same roof or sharing common walls; provided, however, that nothing in this Code section shall apply to single-story malls or shopping centers subdivided into areas of less than 25,000 square feet by a wall or walls with a two-hour fire resistance rating and where there are unobstructed exit doors in the front and rear of every such individual occupancy which open directly to the outside;

(I) (For effective date, see note) Child care learning centers, as such term is defined in Code Section 20-1A-2. Fire safety standards

adopted by rules of the Commissioner pursuant to Code Section 25-2-4 which are applicable to child care learning centers shall not require staff-to-child ratios; and

(J) Personal care homes and assisted living communities required to be licensed as such by the Department of Community Health and having at least seven beds for nonfamily adults, and the Commissioner shall, pursuant to Code Section 25-2-4, by rule adopt state minimum fire safety standards for those homes, and any structure constructed as or converted to a personal care home on or after April 15, 1986, shall be deemed to be a proposed building pursuant to subsection (d) of Code Section 25-2-14 and that structure may be required to be furnished with a sprinkler system meeting the standards established by the Commissioner if he deems this necessary for proper fire safety.

(2) Any building or structure which is used exclusively for agricultural purposes and which is located in an unincorporated area shall be exempt from the classification set forth in paragraph (1) of this subsection.

(3)(A) The provisions of this paragraph relating to landmark museum buildings shall apply only to those portions of such buildings which meet all the requirements of a landmark museum building, except as otherwise provided in subparagraphs (B) and (C) of this paragraph. Subparagraphs (B) and (C) of this paragraph shall, unless otherwise provided in such subparagraphs, preempt all state laws, regulations, or rules governing reconstruction, alteration, repair, or maintenance of landmark museum buildings. Local governing authorities may recognize the designation of landmark museum buildings by ordinance and authorize the local enforcement authority to incorporate the provisions of subparagraphs (B) and (C) of this paragraph into their local building and fire codes. Subparagraphs (D) and (E) of this paragraph shall apply to other historic buildings or structures.

(B) A landmark museum building shall be subject to the following provisions:

(i) Repairs, maintenance, and restoration shall be allowed without conformity to any state building or fire safety related code, standard, rule, or regulation, provided the building is brought into and remains in full compliance with this paragraph;

(ii) In the case of fire or other casualty to a landmark museum building, it may be rebuilt, in total or in part, using such techniques and materials as are necessary to restore it to the condition prior to the fire or casualty and use as a totally preserved building; or

(iii) If a historic building or structure, as a result of proposed work or changes in use, would become eligible and would be so certified as a landmark museum building, and the state historic preservation officer so certifies and such is submitted to the state fire and building code official with the construction or building permit application, then the work may proceed under the provisions of this paragraph.

(C) All landmark museum buildings shall comply with the following requirements:

(i) Every landmark museum building shall have portable fire extinguishers as deemed appropriate by the state or local fire authority having jurisdiction based on the applicable state or local fire safety codes or regulations;

(ii) All landmark museum buildings which contain residential units shall have electrically powered smoke or products of combustion detectors installed within each living unit between living and sleeping areas. Such detectors shall be continuously powered by the building's electrical system. When activated, the detector shall initiate an alarm which is audible in sleeping rooms of that living unit. These unit detectors shall be required in addition to any other protective system that may be installed in the building;

(iii) For all landmark museum buildings, except those protected by a total automatic fire suppression system and one and two family dwellings, approved automatic fire warning protection shall be provided as follows: install at least one listed smoke or products of combustion detector for every 1,200 square feet of floor area per floor or story. In addition, all lobbies, common corridors, hallways, and ways of exit access shall be provided with listed smoke or products of combustion detectors not more than 30 feet apart. Detectors shall be so connected as to sound an alarm audible throughout the structure or building. With respect to buildings which are totally protected by an automatic fire suppression system, activation of the sprinkler system shall sound an alarm throughout the structure or building;

(iv) Smoke or products of combustion detectors shall be listed by a nationally recognized testing laboratory;

(v) All multistory landmark museum buildings, except one and two family dwellings, with occupancy above or below the street or grade level shall have manual fire alarm pull stations in the natural path of egress. The activation of a manual pull station shall cause the building fire warning system to sound;

(vi) Approved exit signs shall be located where designated by the local or state authority having jurisdiction in accordance

with the applicable state or local code, standard, rule, or regulation;

(vii) Except for one and two family dwellings, every landmark museum building occupied after daylight, or which has occupied areas subject to being totally darkened during daylight hours due to a power failure or failure of the electrical system, shall be equipped with approved emergency lighting meeting the provisions of the applicable state or local code, standard, rule, or regulation;

(viii) Occupant loading of landmark museum buildings or structures shall be limited by either the actual structural floor load capacity or by the limitations of means of egress or by a combination of factors. Actual floor load capacity shall be determined by a Georgia registered professional engineer. Said floor load shall be posted at a conspicuous location. The building owner shall submit evidence of this certification and related computations to the enforcement authority having jurisdiction, upon request. Where one or more floors of a landmark museum building have only one means of egress, the occupant load shall be computed and occupancy limited as determined by the state or local fire marshal; and

(ix) The electrical, heating, and mechanical systems of landmark museum buildings shall be inspected and any conditions that create a threat of fire or a threat to life shall be corrected in accordance with applicable standards to the extent deemed necessary by the state or local authority having jurisdiction.

(D) Historic buildings not classified as landmark museum buildings shall meet the requirements of applicable state or local building and fire safety laws, ordinances, codes, standards, rules, or regulations as they pertain to existing buildings. If a historic building or structure is damaged from fire or other casualty, it may be restored to the condition prior to the fire or casualty using techniques and methods consistent with its original construction, or it shall meet the requirements for new construction of the applicable state or local codes, standards, rules, or regulations, provided these requirements do not significantly compromise the features for which the building was considered historically significant.

(E) As to any buildings or structures in the State of Georgia which meet the criteria of paragraph (1) of subsection (b) of this Code section and thus fall under the jurisdiction of the Safety Fire Commissioner and which also have been designated as historically significant by the state historic preservation officer, the appropri-

ate enforcement official, in granting or denying a variance pursuant to subsection (e) of Code Section 25-2-12, shall consider the intent of this chapter, with special attention to paragraph (3) of this subsection, Article 3 of Chapter 2 of Title 8, "The Uniform Act for the Application of Building and Fire Related Codes to Existing Buildings," Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act," and the Secretary of Interior's Standards for Preservation Projects.

(4) Nothing in this subsection shall be construed as exempting any building, structure, facility, or premises from ordinances enacted by any municipal governing authority in any incorporated area or any county governing authority in any unincorporated area, except to the extent stated in paragraph (3) of this subsection relative to landmark museum buildings or historic buildings or structures.

(c) Every person who owns or controls the use of any building, part of a building, or structure described in paragraph (1) of subsection (b) of this Code section, which, because of floor area, height, location, use or intended use as a gathering place for large groups, or use or intended use by or for the aged, the ill, the incompetent, or the imprisoned, constitutes a special hazard to property or to the life and safety of persons on account of fire or panic from fear of fire, must so construct, equip, maintain, and use such building or structure as to afford every reasonable and practical precaution and protection against injury from such hazards. No person who owns or controls the use or occupancy of such a building or structure shall permit the use of the premises so controlled for any such specially hazardous use unless he has provided such precautions against damage to property or injury to persons by these hazards as are found and determined by the Commissioner in the manner described in subsection (d) of this Code section to be reasonable and practical.

(d) The Commissioner is directed to investigate and examine construction and engineering techniques; properties of construction materials, fixtures, facilities, and appliances used in, upon, or in connection with buildings and structures; and fire prevention and protective techniques, including, but not limited to, the codes and standards adopted, recommended, or issued from time to time by the National Fire Protection Association (National Fire Code and National Electric Code), the American Insurance Association (National Building Code), the successor to the National Board of Fire Underwriters, the American Standards Association, and the Standard Building Code Congress (Southern Standard Building Code). Based upon such investigation, the Commissioner is authorized to determine and by rule to provide what reasonable and practical protection must be afforded property and persons with respect to: exits; fire walls and internal partitions ade-

quate to resist fire and to retard the spread of fire, smoke, heat, and gases; electrical wiring, electrical appliances, and electrical installations; safety and protective devices, including, but not limited to, fire escapes, fire prevention equipment, sprinkler systems, fire extinguishers, panic hardware, fire alarm and detection systems, exit lights, emergency auxiliary lights, and other similar safety devices; flameproofing; motion picture equipment and projection booths; and similar facilities; provided, however, that any building described in subparagraph (b)(1)(C) of this Code section shall be required to have a smoke or products of combustion detector listed by a nationally recognized testing laboratory; and, regardless of the manufacturer's instructions, such detectors in these buildings shall be located in all interior corridors, halls, and basements no more than 30 feet apart or more than 15 feet from any wall; where there are no interior halls or corridors, the detectors shall be installed in each sleeping room. All detection systems permitted after April 1, 1992, shall be powered from the building's electrical system and all detection systems required by this chapter, permitted after April 1, 1992, shall have a one and one-half hour emergency power supply source. Required corridor smoke detector systems shall be electrically interconnected to the fire alarm, if a fire alarm is required. If a fire alarm is not required, the detectors at a minimum shall be approved single station detectors powered from the building electrical service.

(e) All rules and regulations promulgated before April 1, 1968, by the Commissioner or the state fire marshal and the minimum fire safety standards adopted therein shall remain in full force and effect where applicable until such time as they are amended by the appropriate authority.

(f) The municipal governing authority in any incorporated area or the county governing authority in any unincorporated area of the state shall have the authority to enact such ordinances as it deems necessary to perform fire safety inspections and related activities for those buildings and structures not covered in this Code section.

(g) Notwithstanding any other provision of law or any local ordinance to the contrary, in the event of a conflict between any code or standard of the National Fire Protection Association (National Fire Code and National Electric Code) and of the Standard Building Code Congress (Southern Standard Building Code), the code or standard of the National Fire Protection Association (National Fire Code and National Electric Code) shall prevail. The order of precedence established by this subsection shall apply to all buildings and structures whether or not such buildings and structures are covered under this Code section. (Ga. L. 1949, p. 1057, § 8; Ga. L. 1967, p. 619, § 1; Ga. L. 1981, p. 1779, §§ 5, 6; Ga. L. 1982, p. 3, § 25; Ga. L. 1984, p. 1160,

§§ 3-6; Ga. L. 1985, p. 149, § 25; Ga. L. 1985, p. 869, § 1; Ga. L. 1985, p. 936, §§ 1, 2; Ga. L. 1985, p. 1642, § 2; Ga. L. 1987, p. 3, § 25; Ga. L. 1988, p. 668, § 1; Ga. L. 1989, p. 815, §§ 1, 2; Ga. L. 1989, p. 918, § 1; Ga. L. 1989, p. 1795, § 2; Ga. L. 1990, p. 1500, § 1; Ga. L. 1992, p. 2186, §§ 3, 4; Ga. L. 1996, p. 1632, § 2; Ga. L. 2004, p. 645, § 4; Ga. L. 2008, p. 12, § 2-6/SB 433; Ga. L. 2011, p. 227, § 6/SB 178; Ga. L. 2013, p. 135, § 12/HB 354; Ga. L. 2015, p. 965, § 4/HB 401.)

Delayed effective date. — Subparagraph (b)(1)(I), as set out above, becomes effective January 1, 2016. For version of subparagraph (b)(1)(I) in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, substituted the present provisions of subparagraph (b)(1)(I) for the former provisions, which read: "Group day-care homes and child care learning centers required to be licensed or commissioned as such by the Department of Early Care and Learning and in which at least seven children receive care. As used in this subparagraph, the term 'group day-care home' means a day-care facility subject to licensure by the Department of Early Care and Learning where at least seven but not more than 12 children receive care; and the term 'child care learning center' means a day-care facility subject to licensure or issuance of a commission by the Department of Early Care and Learning where more than 12 children receive care. Fire safety standards adopted by rules of the Commissioner pursuant to Code Section 25-2-4 which are applicable to group day-care homes and child care learning centers shall not require staff-to-child ratios; and".

25-2-32. Maintenance of records of fire losses; reports of losses by insurance companies; reports of fires.

(a) It shall be the duty of the state fire marshal to keep an up-to-date record of all fire losses, together with statistical data concerning the same. The various fire insurance companies doing business in this state shall submit to the Commissioner, quarterly, a report stating all the losses sustained by them, together with such pertinent data as may be required by the Commissioner.

(b) Effective January 1, 1993, all incidents of fires, whether accidental or incendiary, shall be reported to the office of Safety Fire Commissioner. Every fire department shall submit incident data either via a uniform electronic reporting method or on a uniform reporting form prescribed by the Commissioner and at intervals established by the Commissioner. (Ga. L. 1949, p. 1057, § 25; Ga. L. 1992, p. 2186, § 9; Ga. L. 2015, p. 5, § 25/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, deleted "the" preceding "Safety Fire Commissioner" in the first sentence of subsection (b).

25-2-40. Smoke detectors required in new dwellings and dwelling units; exceptions.

(a)(1) Except as otherwise provided in subsection (f) of this Code section, on and after July 1, 1987, every new dwelling and every new dwelling unit within an apartment, house, condominium, and townhouse and every motel, hotel, and dormitory shall be provided with an approved listed smoke detector installed in accordance with the manufacturer's recommendations and listing.

(2) On and after July 1, 1994, every dwelling and every dwelling unit within an apartment, house, condominium, and townhouse and every motel, hotel, and dormitory which was constructed prior to July 1, 1987, shall have installed an approved battery operated smoke detector which shall be maintained in good working order unless any such building is otherwise required to have a smoke detector system pursuant to Code Section 25-2-13.

(3) On and after July 1, 2001, every patient sleeping room of every nursing home shall be provided with no less than an approved listed battery operated single station smoke detector installed in accordance with their listing. Such detectors shall be maintained in good working order by the operator of such nursing home. This paragraph shall not apply to nursing homes equipped with automatic sprinkler systems.

(b) In dwellings, dwelling units, and other facilities listed in subsection (a) of this Code section, a smoke detector shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to each group of rooms used for sleeping purposes. Where the dwelling or dwelling unit contains more than one story, detectors are required on each story including cellars and basements, but not including uninhabitable attics; provided, however, that hotels and motels which are protected throughout by an approved supervised automatic sprinkler system installed in accordance with the rules and regulations of the Commissioner shall be exempt from the requirement to install smoke detectors in interior corridors but shall be subject to all other applicable requirements imposed under Code Section 25-2-13.

(c) In dwellings, dwelling units, and other facilities listed in paragraph (1) of subsection (a) of this Code section with split levels, a smoke detector need be installed only on the upper level, provided the lower level is less than one full story below the upper level, except that if there is a door between levels then a detector is required on each level. Such detectors shall be connected to a sounding device or other detector to provide an alarm which will be audible in the sleeping areas.

(d) Detectors shall be listed and meet the installation requirements of NFPA 72. In addition, a one and one-half hour emergency power

supply source is required on all detection systems required by this chapter and permitted after April 1, 1992, except where battery operated smoke detectors are allowed.

(e) Any complete automatic fire alarm system using automatic smoke detectors shall be installed in accordance with NFPA 72.

(f)(1) The provisions of this Code section may be enforced by local building and fire code officials in the case of residential buildings which are not covered by Code Section 25-2-13; provided, however, that this Code section shall not establish a special duty on said officials to inspect such residential facilities for compliance with this Code section; provided, further, that inspections shall not be conducted for the purpose of determining compliance with this Code section absent reasonable cause to suspect other building or fire code violations. The jurisdiction enforcing this Code section shall retain any fines collected pursuant to this subsection.

(2) Any occupant who fails to maintain a smoke detector in a dwelling, dwelling unit, or other facility, other than a nursing home, listed in subsection (a) of this Code section in good working order as required in this Code section shall be subject to a maximum fine of $25.00, provided that a warning shall be issued for a first violation.

(3) Any operator of a nursing home who fails to install and maintain the smoke detectors required under paragraph (3) of subsection (a) of this Code section shall be sanctioned in accordance with Code Section 31-2-8.

(g) Failure to maintain a smoke detector in good working order in a dwelling, dwelling unit, or other facility listed in subsection (a) of this Code section in violation of this Code section shall not be considered evidence of negligence, shall not be considered by the court on any question of liability of any person, corporation, or insurer, shall not be any basis for cancellation of coverage or increase in insurance rates, and shall not diminish any recovery for damages arising out of the ownership, maintenance, or occupancy of such dwelling, dwelling unit, or other facility listed in subsection (a) of this Code section.

(h) The Safety Fire Commissioner is authorized and encouraged to inform the public through public service announcements of the availability of a limited number of battery operated smoke detectors which may be obtained by persons in need without charge from the office of Safety Fire Commissioner or local fire departments. (Code 1981, § 25-2-40, enacted by Ga. L. 1987, p. 989, § 1; Ga. L. 1992, p. 2186, § 12; Ga. L. 1994, p. 1235, § 1; Ga. L. 2001, p. 860, § 1; Ga. L. 2009, p. 453, § 1-9/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214; Ga. L. 2015, p. 5, § 25/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, deleted "the" preceding "Safety Fire Commissioner" near the end of subsection (h).

CHAPTER 3

LOCAL FIRE DEPARTMENTS GENERALLY

Article 2

Minimum Requirements

Sec.
25-3-24. Authority of executive director to determine compliance.

ARTICLE 2

MINIMUM REQUIREMENTS

25-3-24. Authority of executive director to determine compliance.

The executive director may consult with and consider the recommendations of the director of the State Forestry Commission, the director of the Georgia Fire Academy, the state fire marshal, and the governing authority of any county or municipality in which the fire department is located to determine if individual fire departments are complying with the minimum provisions of this article and serving the best interests of the citizens of the area of its operations. (Code 1981, § 25-3-24, enacted by Ga. L. 1984, p. 1000, § 3; Ga. L. 1995, p. 341, § 4; Ga. L. 2015, p. 5, § 25/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted "State Forestry Commission" for "Georgia Forestry Commission" near the beginning of this Code section.

CHAPTER 4

FIREFIGHTER STANDARDS AND TRAINING

Article 1

General Provisions

Sec.
25-4-3. Georgia Firefighter Standards and Training Council — Establishment and organization; advisory committee; expenses and allowances.

ARTICLE 1

GENERAL PROVISIONS

25-4-3. Georgia Firefighter Standards and Training Council — Establishment and organization; advisory committee; expenses and allowances.

(a) The Georgia Firefighter Standards and Training Council is established. The council shall be composed of 11 members, one of whom shall be the Safety Fire Commissioner or the designated representative of the Safety Fire Commissioner. Two members shall be appointed by the Lieutenant Governor. Two members shall be appointed by the Speaker of the House of Representatives. The remaining six members shall be appointed by the Governor subject to the following requirements:

(1) One member shall be a member of the governing authority of a county;

(2) One member shall be a member of the governing authority of a municipality;

(3) One member shall be a city or county manager;

(4) One member shall be the chief of a county or municipal fire department; and

(5) Two members shall be state certified firefighter training officers.

(b) The members of the council appointed by the Governor pursuant to subsection (a) of this Code section shall be appointed at the sole discretion of the Governor. However, the Governor may consider for appointment to the council persons suggested for membership thereon as follows:

(1) The Association County Commissioners of Georgia may suggest the names of three persons for each appointment pursuant to paragraph (1) of subsection (a) of this Code section;

(2) The Georgia Municipal Association may suggest the names of three persons for each appointment pursuant to paragraph (2) of subsection (a) of this Code section;

(3) The Georgia City and County Management Association may suggest the names of three persons for each appointment pursuant to paragraph (3) of subsection (a) of this Code section;

(4) The Georgia Association of Fire Chiefs may suggest the names of three persons for each appointment pursuant to paragraph (4) of subsection (a) of this Code section; and

(5) The Executive Board of the Georgia State Firemen's Association may suggest the names of three persons for each appointment pursuant to paragraph (5) of subsection (a) of this Code section.

(c)(1) The first members of the council appointed by the Governor pursuant to subsection (a) of this Code section shall be appointed to take office on January 1, 1986. The two members appointed pursuant to paragraphs (1) and (2) of subsection (a) of this Code section shall be appointed for initial terms of one year, the two members appointed pursuant to paragraphs (3) and (4) of subsection (a) of this Code section shall be appointed for initial terms of two years, and the two members appointed pursuant to paragraph (5) of subsection (a) of this Code section shall be appointed for initial terms of three years. Thereafter, successors shall be appointed for terms of three years as the respective terms of office expire.

(2) The members appointed by the Lieutenant Governor and the members appointed by the Speaker of the House of Representatives shall each serve for terms concurrent with terms of members of the General Assembly.

(3) All members shall serve until their successors are appointed and qualified. In the event of a vacancy in the membership of the council for any reason, including ceasing to hold an office or position required for membership on the council, the Governor shall fill such vacancy for the unexpired term; except that a vacancy in either of those members of the council appointed by the Lieutenant Governor or the Speaker of the House of Representatives shall be filled for the remainder of the unexpired term in the same manner as the original appointment. In order for the Governor to consider the names of persons suggested for membership on the council pursuant to subsection (b) of this Code section, such names must be submitted to the Governor by the respective organizations at least 60 days but not more than 90 days prior to the expiration of the respective terms of office or prior to the appointment of the initial members of the council who take office on January 1, 1986. The Governor shall be authorized, but not required, to request the appropriate organization designated in subsection (b) of this Code section to suggest the names of three persons for the Governor's consideration in making an appointment to fill a vacancy.

(d) At the first regular meeting of the council held in each even-numbered year, the council shall elect a chairperson and such other officers from its own membership as it deems necessary to serve until successors are elected by the council as provided in this subsection.

(e) The council may, from time to time, designate an advisory committee of not more than three members to assist and advise the

council in carrying out its duties under this chapter. The members of any such advisory committee shall serve at the pleasure of the council.

(f) Each member of the council and each member of an advisory committee of the council, in carrying out their official duties, shall be entitled to receive the same expense and mileage allowance authorized for members of professional licensing boards by subsection (f) of Code Section 43-1-2. The funds for such expenses and allowances shall be paid from funds appropriated or available to the Department of Public Safety. (Ga. L. 1971, p. 693, § 3; Ga. L. 1976, p. 1725, § 9; Ga. L. 1985, p. 1493, § 2; Ga. L. 1986, p. 10, § 25; Ga. L. 2000, p. 1706, § 19; Ga. L. 2003, p. 888, § 5; Ga. L. 2004, p. 631, § 25; Ga. L. 2015, p. 5, § 25/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted "11 members" for "eleven members" in the second sentence of the introductory paragraph of subsection (a).

CHAPTER 9

BLASTING OR EXCAVATING NEAR UTILITY FACILITIES

Sec.
25-9-6. Prerequisites to blasting or excavating; marking of sites.
25-9-13. Penalties for violations of chapter; bonds; enforcement; advisory committee; dispose of settlement recommendations.

25-9-6. Prerequisites to blasting or excavating; marking of sites.

(a) No person shall commence, perform, or engage in blasting or in excavating with mechanized excavating equipment on any tract or parcel of land in any county in this state unless and until the person planning the blasting or excavating has given 48 hours' notice by submitting a locate request to the UPC, beginning the next business day after such notice is provided, excluding hours during days other than business days. Any person performing excavation is responsible for being aware of all information timely entered into the PRIS prior to the commencement of excavation. If, prior to the expiration of the 48 hour waiting period, all identified facility owners or operators have responded to the locate request, and if all have indicated that their facilities either are not in conflict or have been marked, then the person planning to perform excavation or blasting shall be authorized to commence work, subject to the other requirements of this Code section, without waiting the full 48 hours. The 48 hours' notice shall not be required for excavating where minimally intrusive excavation methods

are used exclusively. Any locate request received by the UPC after business hours shall be deemed to have been received by the UPC the next business day. Such locate request shall:

(1) Describe the tract or parcel of land upon which the blasting or excavation is to take place with sufficient particularity, as defined by policies developed and promulgated by the UPC, to enable the facility owner or operator to ascertain the precise tract or parcel of land involved;

(2) State the name, address, and telephone number of the person who will engage in the blasting or excavating;

(3) Describe the type of blasting or excavating to be engaged in by the person; and

(4) Define the time frame in which requested excavation may occur.

(b) In the event the location upon which the blasting or excavating is to take place cannot be described with sufficient particularity to enable the facility owner or operator to ascertain the precise tract or parcel involved, the person proposing the blasting or excavating shall mark the route or boundary of the site of the proposed blasting or excavating by means of white paint, white stakes, or white flags if practical, or schedule an on-site meeting with the locator or facility owner or operator and inform the UPC, within a reasonable time, of the results of such meeting. The person marking a site with white lining shall comply with the rules and regulations of the Department of Transportation as to the use of such markings so as not to obstruct signs, pavement markings, pavement, or other safety devices.

(c) Except as otherwise provided in this subsection, notice given pursuant to subsection (a) of this Code section shall expire 21 calendar days following the date of such notice, and no blasting or excavating undertaken pursuant to this notice shall continue after such time has expired. In the event that the blasting or excavating which is the subject of the notice given pursuant to subsection (a) of this Code section will not be completed within 21 calendar days following the date of such notice, an additional notice must be given in accordance with subsection (a) of this Code section for the locate request to remain valid. Additional notices for an existing request shall not expand the tract or parcel of land upon which the blasting or excavation is to take place.

(d) For emergencies, notice shall expire at 7:00 A.M. three business days after the notification is made to the UPC.

(e) Except for those persons submitting design locate requests, no person, including facility owners or operators, shall request marking of a site through the UPC unless excavating is scheduled to commence. In

addition, no person shall make repeated requests for re-marking, unless the repeated request is required for excavating to continue or due to circumstances not reasonably within the control of such person. Any person who willfully fails to comply with this subsection shall be liable to the facility owner or operator for $100.00 or for actual costs, whichever is greater, for each repeated request for re-marking.

(f) If, subsequent to giving the notice to the UPC required by subsection (a) of this Code section, a person planning excavating determines that such work will require blasting, then such person shall promptly so notify the UPC and shall refrain from any blasting until the facility owner or operator responds within 24 hours, excluding hours during days other than business days, following receipt by the UPC of such notice.

(g) When a locate request is made in accordance with subsection (a) of this Code section, excavators other than the person planning the blasting or excavating may conduct such activity, provided that the person planning the blasting or excavating shall remain responsible for ensuring that any stakes or other markings placed in accordance with this chapter remain in place and reasonably visible until such blasting or excavating is completed; and provided, further, that such blasting or excavating is:

(1) Performed on the tract or parcel of land identified in the locate request;

(2) Performed by a person authorized by and having a contractual relationship with the person planning the blasting or excavating;

(3) The type of blasting or excavating described in the locate request; and

(4) Carried out in accordance with all other requirements of this chapter.

(h) Facility owners or operators may bill an excavator their costs for any requests for re-marking other than for re-marks with no more than five individual addresses on a single locate request. Such costs shall be documented actual costs and shall not exceed $100.00 per re-mark request. (Ga. L. 1969, p. 50, § 5; Ga. L. 1975, p. 417, § 3; Code 1981, § 25-9-5 [repealed]; Code 1981, § 25-9-6, as redesignated by Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1; Ga. L. 2005, p. 1142, § 5/SB 274; Ga. L. 2014, p. 652, § 3/SB 117; Ga. L. 2015, p. 5, § 25/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted "facilities either are" for "facilities are either" in the third sentence of the introductory language of subsection (a);

and substituted "so as not to obstruct signs" for "so as to not to obstruct signs" in the last sentence of subsection (b).

25-9-13. Penalties for violations of chapter; bonds; enforcement; advisory committee; dispose of settlement recommendations.

(a) Any person who violates the requirements of subsection (a), (f), or (g) of Code Section 25-9-6 and whose subsequent excavating or blasting damages utility facilities or sewer laterals shall be strictly liable for:

(1) All costs incurred by the facility owner or operator in repairing or replacing its damaged facilities; and

(2) Any injury or damage to persons or property resulting from damaging the utility facilities and sewer laterals.

(b) Each local governing authority is authorized to require by ordinance any bonds on utility contractors or on persons performing excavation or blasting within the public right of way or any dedicated utility easement as it may determine to assure compliance with subsection (a) of this Code section.

(c) Any person who violates the requirements of Code Section 25-9-6 and whose subsequent excavating or blasting damages utility facilities or sewer laterals shall also indemnify the affected facility owner or operator against all claims or costs incurred, if any, for personal injury, property damage, or service interruptions resulting from damaging the utility facilities and sewer laterals. Such obligation to indemnify shall not apply to any county, city, town, or state agency except as permitted by law.

(d) In addition to the other provisions of this Code section, a professional licensing board shall be authorized to suspend or revoke any professional or occupational license, certificate, or registration issued to a person pursuant to Title 43 whenever such person has repeatedly violated the requirements of Code Section 25-9-6 or 25-9-8.

(e) Subsections (a), (c), and (d) of this Code section shall not apply to any person who shall commence, perform, or engage in blasting or in excavating with mechanized equipment on any tract or parcel of land in any county in this state if the facility owner or operator to which notice was given respecting such blasting or excavating with mechanized equipment as prescribed in subsection (a) of Code Section 25-9-6 has failed to comply with Code Section 25-9-7 or has failed to become a member of the UPC as required by Code Section 25-9-5.

(f) The enforcement provisions of this Code section shall not apply to any person who shall commence, perform, or engage in blasting or in

excavating with mechanized equipment within the curb lines or edges of the pavement of any public road and who causes damage to a utility facility located within the roadway hard surface or the graded aggregate base therein if such person has complied with the provisions of this chapter and there is no indication that a utility facility is in conflict with the proposed excavation.

(g) The commission shall enforce the provisions of this chapter. The commission may promulgate any rules and regulations necessary to implement the commission's authority to enforce this chapter.

(h)(1) The Governor shall appoint an advisory committee consisting of persons who are employees or officials of or who represent the interests of:

(A) One member to represent the Department of Transportation;

(B) One member to represent water systems or water and sewer systems owned or operated by local governing authorities;

(C) One member to represent the utilities protection center;

(D) One member to represent water systems or water and sewer systems owned or operated by counties;

(E) One member to represent water systems or water and sewer systems owned or operated by municipalities;

(F) One member to represent the nonmunicipal electric industry;

(G) Five members to represent excavators to include the following:

(i) One licensed utility contractor;

(ii) One licensed general contractor;

(iii) One licensed plumber;

(iv) One landscape contractor; and

(v) One highway contractor;

(H) One member to represent locators;

(I) One member to represent the nonmunicipal telecommunications industry;

(J) One member to represent the nonmunicipal natural gas industry;

(K) One member to represent municipal gas, electric, or telecommunications providers; and

(L) The commission chairperson or such chairperson's designee.

The commission chairperson or his or her designee shall serve as chairperson of the advisory committee and shall cast a vote only in the case of a tie. Persons appointed to the advisory committee shall have expert knowledge of this chapter and specific operations expertise with the subject matter encompassed by the provisions of this chapter.

(2) The advisory committee shall establish rules of operation including an attendance policy. In the event a committee member resigns or fails to meet the criteria of the attendance policy, the advisory committee shall appoint an interim member to represent the same stakeholder group until such time as the Governor appoints a replacement.

(3) The advisory committee shall assist the commission in the enforcement of this chapter, make recommendations to the commission regarding rules and regulations, and perform duties to be assigned by the commission including, but not limited to, the review of reported violations of this chapter and the preparation of recommendations to the commission as to the appropriate penalties to impose on persons violating the provisions of this chapter.

(4) The members of the advisory committee shall be immune, individually and jointly, from civil liability for any act or omission done or made in the performance of their duties while serving as members of such advisory committee, but only in the absence of willful misconduct.

(i)(1) Commission enforcement of this chapter shall follow the procedures described in this subsection. Nothing in this subsection shall limit the authority of the commission delegated from the federal government and authorized in other state law.

(2)(A) The commission is not authorized to impose civil penalties on any local governing authority except as provided in this paragraph. The commission may recommend training for local governing authorities in response to any probable or proven violation. Civil penalties may be recommended for or imposed on any local governing authority for refusal to comply with the requirements of Code Section 25-9-7 or for other violations of Code Section 25-9-7 that result in injury to people, damage to property, or the interruption of utility service in the event that investigators find that a local governing authority has demonstrated a pattern of willful noncompliance. Civil penalties may be recommended or imposed on or after January 1, 2006, for violations of provisions of this chapter other than Code Section 25-9-7 in the event that investigators find that the severity of an excavation violation warrants civil penalties or

that a local governing authority has demonstrated a pattern of willful noncompliance. Any such civil penalty shall be recommended or imposed in accordance with a tiered penalty structure designed for local governing authorities. In the event that the investigators determine that a local governing authority has made a good faith effort to comply with this chapter, the investigators shall not recommend a civil penalty. For purposes of this subsection "refusal to comply" means that a utility facility owner or operator does not respond in PRIS to a locate request, does not respond to a direct telephone call to designate their facilities, or other such direct refusal. Refusal to comply does not mean a case where the volume of requests or some other mitigating circumstance prevents the utility owner or operator from locating in accordance with Code Section 25-9-7.

(B) No later than January 1, 2006, the advisory committee shall recommend to the commission for adoption a tiered penalty structure for local governing authorities. Such structure shall take into account the size, annual budget, gross receipts, number of utility connections and types of utilities within the territory of the local governing authority. Such penalty structure shall also take into account the number of locate requests received annually by the local governing authority, the number of locate codes made annually to the local governing authority from the UPC, the number of utility customers whose service may have been interrupted by violations of this chapter, and the duration of such interruptions. Such penalty structure shall also consider the cost of compliance. The penalty structure shall establish for each tier the maximum penalty per violation and per 12 month period at a level to induce compliance with this chapter. Such maximum penalty shall not exceed $5,000.00 per violation or $50,000.00 per 12 month period for the highest tier.

(3) If commission investigators find that a probable violation has occurred, they may recommend training in lieu of penalties to any person for any violation. The commission shall provide suggestions for corrective action to any person requesting such assistance. Commission investigators shall make recommended findings or offers of settlement to the respondent.

(4) Any respondent may accept or disagree with the settlement recommended by the investigators. If the respondent disagrees with the recommended settlement, the respondent may dispute the settlement recommendation to the advisory committee. The advisory committee shall then render a recommendation either supporting the investigators' recommendation, rejecting the investigators' recommendation, or substituting its own recommendation. With respect to

an investigation of any probable violation committed by a local governing authority, any recommendation by the advisory committee shall be in accordance with the provisions of paragraph (2) of this subsection. In its deliberations the advisory committee shall consider the gravity of the violation or violations; the degree of the respondent's culpability; the respondent's history of prior offenses; and such other mitigating factors as may be appropriate. If the advisory committee determines that a respondent has made a good faith effort to comply with this chapter, the committee shall not recommend civil penalties against the respondent. To the extent that a respondent does not accept a settlement agreement or request to dispute the recommendation of the investigators to the advisory committee, the respondent shall be assigned to a hearing officer or administrative law judge.

(5) If any respondent disagrees with the recommendation of the advisory committee, after notice and hearing by a hearing officer or administrative law judge, such officer or judge shall make recommendations to the commission regarding enforcement, including civil penalties. Any such recommendations relating to a local governing authority shall comply with the provisions of paragraph (2) of this subsection. The acceptance of the recommendations by the respondent at any point will stop further action by the investigators in that case.

(6) When the respondent agrees with the advisory committee recommendation, the investigators shall present such agreement to the commission. The commission is then authorized to adopt the recommendation of the advisory committee regarding a civil penalty, or to reject such a recommendation. The commission is not authorized to impose a civil penalty greater than the civil penalty recommended by the advisory committee or to impose any civil penalty if the advisory committee does not recommend a civil penalty.

(7) The commission may, by judgment entered after a hearing on notice duly served on any person not less than 30 days before the date of the hearing, impose a civil penalty not exceeding $10,000.00 for each violation, if it is proved that the person violated any of the provisions of this chapter as a result of a failure to exercise additional care in accordance with subsection (d) of Code Section 25-9-8 or reasonable care in accordance with other provisions of this chapter. Any such recommendations relating to a local governing authority shall comply with the provisions of paragraph (2) of this subsection. Any proceeding or civil penalty undertaken pursuant to this Code section shall neither prevent nor preempt the right of any party to obtain civil damages for personal injury or property damage in private causes of action except as otherwise provided in this chapter.

(j) All civil penalties ordered by the commission and collected pursuant to this Code section shall be deposited in the general fund of the state treasury. (Code 1981, § 25-9-13, enacted by Ga. L. 1986, p. 1069, § 1; Ga. L. 1989, p. 495, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2005, p. 1142, § 10/SB 274; Ga. L. 2014, p. 652, § 7/SB 117; Ga. L. 2014, p. 866, § 25/SB 340; Ga. L. 2015, p. 5, § 25/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, revised language in the introductory language of subsection (a).

CHAPTER 10

REGULATION OF FIREWORKS

25-10-1. Definitions.

(a) As used in this chapter, the term:

(1) "Consumer fireworks" means any small fireworks devices containing restricted amounts of pyrotechnic composition, designed primarily to produce visible or audible effects by combustion, that comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission as provided for in Parts 1500 and 1507 of Title 16 of the Code of Federal Regulations, the United States Department of Transportation as provided for in Part 172 of Title 49 of the Code of Federal Regulations, and the American Pyrotechnics Association as provided for in the 2001 American Pyrotechnics Association Standard 87-1, and additionally shall mean Roman candles.

(2) "Consumer fireworks retail sales facility" shall have the same meaning as provided for by NFPA 1124.

(3) "Consumer fireworks retail sales stand" shall have the same meaning as provided for by NFPA 1124.

(4) "Distributor" means any person, firm, corporation, association, or partnership which sells consumer fireworks.

(5) "Fireworks" means any combustible or explosive composition or any substance or combination of substances or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, including blank cartridges, firecrackers, torpedos, skyrockets, bombs, sparklers, and other combustibles and explosives of like construction, as well as articles containing any explosive or flammable compound and tablets and other devices containing an explosive substance.

(6) "NFPA 1124" means the National Fire Protection Association Standard 1124, *Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles*, 2006 Edition.

(7) "Nonprofit group" means any entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986.

(8) "Proximate audience" means an audience closer to pyrotechnic devices than permitted by the National Fire Protection Association Standard 1123, *Code for Fireworks Display*, as adopted by the Safety Fire Commissioner.

(9) "Pyrotechnics" means fireworks.

(10) "Retail chain" means a person, firm, corporation, association, or partnership with more than one store, where all such stores are collectively known to the public by the same name or share central management.

(11) "Store" shall have the same meaning as provided for by NFPA 1124.

(b) As used in this chapter, the term "consumer fireworks" or "fireworks" shall not include:

(1) Model rockets and model rocket engines designed, sold, and used for the purpose of propelling recoverable aero models, toy pistol paper caps in which the explosive content averages 0.25 grains or less of explosive mixture per paper cap or toy pistols, toy cannons, toy canes, toy guns, or other devices using such paper caps; nor shall the term "consumer fireworks" or "fireworks" include ammunition consumed by weapons used for sporting and hunting purposes; and

(2) Wire or wood sparklers of 100 grams or less of mixture per item; other sparkling items which are nonexplosive and nonaerial and contain 75 grams or less of chemical compound per tube or a total of 500 grams or less for multiple tubes; snake and glow worms; smoke devices; or trick noise makers which include paper streamers, party poppers, string poppers, snappers, and drop pops each consisting of

0.25 grains or less of explosive mixture. (Ga. L. 1955, p. 550, § 2; Ga. L. 1962, p. 11, § 1; Ga. L. 1986, p. 798, § 1; Ga. L. 2003, p. 294, § 1; Ga. L. 2005, p. 596, § 1/SB 133; Ga. L. 2007, p. 47, § 25/SB 103; Ga. L. 2015, p. 274, § 2/HB 110.)

The 2015 amendment, effective July 1, 2015, added paragraphs (a)(1) through (a)(4); redesignated former paragraph (a)(1) as present paragraph (a)(5); near the middle of present paragraph (a)(5), deleted "balloons requiring fire underneath to propel them," preceding "fireworks" and deleted "Roman candles" preceding "bombs"; added paragraphs (a)(6) and (a)(7); redesignated former paragraphs (a)(2) and (a)(3) as present paragraphs (a)(8) and (a)(9), respectively; added paragraphs (a)(11) and (a)(12); inserted "'consumer fireworks' or" in subsection (b) and paragraph (b)(1); and, in the middle of paragraph (b)(2), substituted "500 grams" for "200 grams" and inserted "smoke devices; or".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, paragraphs (a)(11) and (a)(12) were redesignated as paragraphs (a)(10) and (a)(11).

Pursuant to Code Section 28-9-5, in 2015, "party poppers, string poppers" was substituted for "party peppers, string peppers" in paragraph (b)(2).

25-10-2. Prohibited fireworks activities.

(a) It shall be unlawful for any person, firm, corporation, association, or partnership to offer for sale at retail or wholesale, to use or explode or cause to be exploded, or to possess, manufacture, transport, or store any consumer fireworks or fireworks, except as otherwise provided in this chapter.

(b)(1) Notwithstanding any provision of this chapter to the contrary, it shall be unlawful for any person, firm, corporation, association, or partnership to sell consumer fireworks or any items defined in paragraph (2) of subsection (b) of Code Section 25-10-1 to any person under 18 years of age.

(2) It shall be unlawful to sell consumer fireworks or any items defined in paragraph (2) of subsection (b) of Code Section 25-10-1 to any person by any means other than an in-person, face-to-face sale. Such person shall provide proper identification to the seller at the time of such purchase. For purposes of this paragraph, the term "proper identification" means any document issued by a governmental agency containing a description of the person or such person's photograph, or both, and giving such person's date of birth and includes without being limited to a passport, military identification card, driver's license, or identification card authorized under Code Sections 40-5-100 through 40-5-104.

(3)(A) It shall be unlawful to use fireworks, consumer fireworks, or any items defined in paragraph (2) of subsection (b) of Code Section 25-10-1 indoors.

(B) Except as provided for in subparagraph (D) of this paragraph and subject to paragraph (4) of this subsection, it shall be lawful for

any person, firm, corporation, association, or partnership to use or explode or cause to be exploded any consumer fireworks on any day between the hours of 10:00 A.M. and 12:00 Midnight only; provided, however, that it shall be lawful for any person, firm, corporation, association, or partnership to use or explode or cause to be exploded any consumer fireworks on January 1, July 3, July 4, and December 31 of each year between the hours of 12:00 Midnight and 2:00 A.M.

(C) Subject to paragraph (4) of this subsection, it shall be lawful for any person, firm, corporation, association, or partnership to use or explode or cause to be exploded any consumer fireworks anywhere in this state except:

(i) As provided for under subparagraph (A) of this paragraph;

(ii) In any location where such person, firm, corporation, association, or partnership is not lawfully present or is not otherwise lawfully permitted to use or explode or cause to be exploded any consumer fireworks; or

(iii) Within 100 yards of a nuclear power facility or a facility engaged in the retail sale of gasoline or the production, refining, processing, or blending of gasoline for such retail purposes.

(D) Any person, firm, corporation, association, or partnership may use or explode or cause to be exploded any consumer fireworks on any day at a time not provided for under subparagraph (B) of this paragraph if such person, firm, corporation, association, or partnership is issued a special use permit pursuant to the law of a governing authority of a county or municipal corporation for the use or explosion of consumer fireworks in a location within such county or municipality at a time not provided for under subparagraph (B) of this paragraph. Such special use permit shall designate the time or times and location that such person, firm, corporation, association, or partnership may use or explode or cause to be exploded such consumer fireworks. A fee assessed by a county or municipal corporation for the issuance of a special use permit pursuant to this subparagraph shall not exceed $100.00. No governing authority or official of a county, municipality, or other political subdivision shall bear liability for any decisions made pursuant to this Code section.

(4)(A) It shall be lawful for any person 18 years of age or older to use or explode or cause to be exploded or to possess, manufacture, transport, or store consumer fireworks.

(B) To the extent otherwise permitted by law, it shall be lawful for any person who is 16 or 17 years of age to possess or transport

consumer fireworks, provided that such person is serving as an assistant to a distributor licensed under subsection (c) of Code Section 25-10-5.1 or the nonprofit group benefiting from such distributor's application pursuant to subsection (c) of Code Section 25-10-5.1 and is not transporting such consumer fireworks on a highway which constitutes a part of The Dwight D. Eisenhower System of Interstate and Defense Highways.

(5)(A) It shall be lawful for any person 18 years of age or older to sell or to offer for sale at retail or wholesale any consumer fireworks pursuant to the requirements of this chapter.

(B) It shall be lawful for any person who is 16 or 17 years of age to sell or to offer for sale at retail or wholesale any consumer fireworks, provided that such person is serving as an assistant to a distributor licensed under subsection (c) of Code Section 25-10-5.1 or the nonprofit group benefiting from such distributor's application pursuant to subsection (c) of Code Section 25-10-5.1.

(6)(A) It shall be lawful to sell consumer fireworks from a permanent consumer fireworks retail sales facility or store only if such permanent consumer fireworks retail sales facility or store is:

(i) In compliance with the requirements for such a permanent consumer fireworks retail sales facility or store in the selling of consumer fireworks as provided for in NFPA 1124; and

(ii) Selling consumer fireworks of a distributor licensed pursuant to subsection (b) or (d) of Code Section 25-10-5.1.

(B) It shall be lawful to sell consumer fireworks from a temporary consumer fireworks retail sales stand only if such temporary consumer fireworks retail sales stand is:

(i) In compliance with the requirements for such a temporary consumer fireworks retail sales stand in the selling of consumer fireworks as provided for in NFPA 1124;

(ii) Within 1,000 feet of a fire hydrant of a county, municipality, or other political subdivision or a fire department connection of a building affiliated with such consumer fireworks retail sales stand, unless the chief administrative officer of the fire department of a county, municipality, or other political subdivision or chartered fire department legally organized to operate in this state pursuant to Chapter 3 of this title and having operational authority over such location of the temporary consumer fireworks retail sales stand provides in writing that such temporary consumer fireworks retail sales stand may operate in excess of 1,000 feet from such fire hydrant or fire department connection; and

(iii) Selling consumer fireworks of a distributor licensed pursuant to subsection (c) of Code Section 25-10-5.1.

No distributor licensed pursuant to subsection (c) of Code Section 25-10-5.1 shall at any one time operate more than two temporary consumer fireworks retail sales stands for each license issued to such distributor under subsection (b) or (d) of Code Section 25-10-5.1, except that a distributor which is a retail chain and which is licensed pursuant to subsection (d) of Code Section 25-10-5.1 shall not at any one time operate more than two temporary consumer fireworks retail sales stands for each store of such retail chain. Such temporary consumer fireworks retail sales stands shall be located within the same county as the location of such permanent consumer fireworks retail sales facility or store provided for under subsection (b) or (d) of Code Section 25-10-5.1; provided, however, that if a county does not have a distributor licensed pursuant to subsection (b) or (d) of Code Section 25-10-5.1 offering consumer fireworks for sale from a permanent consumer fireworks retail sales facility or store within its boundaries, then a distributor licensed pursuant to subsection (b) or (d) of Code Section 25-10-5.1 offering consumer fireworks for sale from a permanent consumer fireworks retail sales facility or store within 75 miles of the perimeter of the boundaries of such county may locate one of the two temporary consumer fireworks retail sales stands in the unserved county.

(C) It shall be unlawful to sell consumer fireworks from any motor vehicle or from a trailer towed by a motor vehicle. (Ga. L. 1955, p. 550, § 3; Ga. L. 1962, p. 11, § 2; Ga. L. 1996, p. 945, § 1; Ga. L. 2005, p. 596, § 2/SB 133; Ga. L. 2015, p. 274, § 3/HB 110.)

The 2015 amendment, effective July 1, 2015, inserted "consumer fireworks or" near the end of subsection (a) and rewrote subsection (b).

25-10-5.1. Requirements for issuance of license to distribute consumer fireworks.

(a)(1) A license pursuant to this Code section shall only be issued to a distributor that:

(A) Complies with all the requirements of this chapter; and

(B) Maintains at all times public liability and product liability insurance with minimum coverage limits of $2 million to cover the losses, damages, or injuries that might ensue to persons or property as a result of selling consumer fireworks.

(2) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an application

executed pursuant to this Code section shall be guilty of a violation of Code Section 16-10-20.

(b)(1) The initial license fee for a distributor selling consumer fireworks from a permanent consumer fireworks retail sales facility shall be $5,000.00 per location, payable to the Safety Fire Commissioner. Upon a finding that a distributor has met the requirements of paragraph (1) of subsection (a) of this Code section and upon payment of such license fee, such initial license shall be issued by the Safety Fire Commissioner and shall identify the permanent consumer fireworks retail sales facility applicable to such license. Such initial license shall expire on January 31 of the year after such initial license was issued. After such initial license, such distributor may annually renew such initial license for $1,000.00 per year, payable to the Safety Fire Commissioner. Upon finding that a distributor has met the requirements of paragraph (1) of subsection (a) of this Code section and upon payment of such license fee, such annual license shall be issued by the Safety Fire Commissioner and shall identify the permanent consumer fireworks retail sales facility applicable to such license. Such annual license shall expire on January 31 of each year; provided, however, that a distributor shall not apply for an annual license earlier than 30 days prior to the expiration of an initial license or annual license.

(2) The determination by the Safety Fire Commissioner of whether a distributor has met requirements for the issuance of a license required by this subsection shall be made within 15 days of the submission of an application for any such license. Such application shall be in writing and, if the Safety Fire Commissioner provides for a written form for the application for a license pursuant to this Code section, upon such form as may be provided by the Safety Fire Commissioner. If a determination has not been made within the time provided for by this paragraph, or for an appeal of a determination by the Safety Fire Commissioner, a distributor may seek review from the judge of the probate court of the county of the location or proposed location of the permanent consumer fireworks retail sales facility. Such judge may provide for the issuance or nonissuance of a license and for the payment of license fees in such manner as is consistent with the provisions of this subsection.

(c)(1) The license fee for a distributor selling consumer fireworks from a temporary consumer fireworks retail sales stand shall be $500.00 per location, payable to the governing authority of the county, municipality, or other political subdivision of this state in whose boundaries such temporary consumer fireworks retail sales stand shall be located or is proposed to be located. Upon finding that a distributor has met the requirements of paragraph (1) of subsection

(a) of this Code section, has a license pursuant to subsection (b) or (d) of this Code section for a location applicable to the location of such temporary consumer fireworks retail sales stand as provided for in subparagraph (b)(6)(B) of Code Section 25-10-2, has no more than the allowable temporary consumer fireworks retail sales stands pursuant to subparagraph (b)(6)(B) of Code Section 25-10-2, that the sales of consumer fireworks from such temporary consumer fireworks retail sales stand shall accrue to the benefit of a nonprofit group, and upon payment of such license fee, such license shall be issued by the fire department of the county, municipality, or other political subdivision or the chartered fire department legally organized to operate in this state pursuant to Chapter 3 of this title and having operational authority of the area in which such temporary consumer fireworks retail sales stand shall be located or is proposed to be located; provided, however, that no such license shall be issued prior to January 1, 2016. Such license shall identify the temporary consumer fireworks retail sales stand applicable to such license and shall expire 90 days after the issuance of such license.

(2) A determination by a fire department as provided for under paragraph (1) of this subsection of whether a distributor has met requirements for the issuance of a license pursuant to this subsection shall be made within 15 days of the submission of an application for any such license. Such application shall be in writing and, if such fire department provides for a written form for the application for a license pursuant to this Code section, upon such form as may be provided by such fire department. If a determination has not been made within the time provided for by this paragraph, or for an appeal of a determination by such fire department, a distributor may seek review from the judge of the probate court of the county of the location or proposed location of the temporary consumer fireworks retail sales stand. Such judge may provide for the issuance or nonissuance of a license and for the payment of license fees in such manner as is consistent with the provisions of this subsection.

(3) A nonprofit group benefiting from the sale of consumer fireworks pursuant to this Code section shall directly participate in operating the temporary consumer fireworks retail sales stand. It shall be unlawful for a nonprofit group or any agent or bona fide representative of a nonprofit group to knowingly lend the name of the nonprofit group or allow the identity of the nonprofit group to be used for the license under this subsection if such nonprofit group is not directly participating in operating such temporary consumer fireworks retail sales stand.

(4) The governing authority of a county, municipality, or other political subdivision receiving fees pursuant to this Code section shall expend such fees for public safety purposes.

(5) A distributor licensed pursuant to this subsection shall submit a list of the names and addresses, including the counties, of each temporary consumer fireworks retail sales stand at which such distributor has consumer fireworks offered for sale pursuant to this Code section to the Safety Fire Commissioner. Such list shall be submitted by January 31 of each year and such distributor shall amend such list, or file an initial list if such distributor first becomes licensed after January 31 of a particular year, within 45 days of having such distributor's consumer fireworks offered for sale at a location not previously included on such list. The Safety Fire Commissioner shall make such list publicly available for inspection. In making determinations as provided for under this subsection, fire departments shall reference the list provided for by this paragraph.

(d)(1) The initial license fee for a distributor selling consumer fireworks from a store shall be $5,000.00, payable to the Safety Fire Commissioner, provided that, if a store is a retail chain, one payment of $5,000.00 shall satisfy such license fee for each store of the retail chain. Upon finding that a distributor has met the requirements of paragraph (1) of subsection (a) of this Code section, such initial license shall be issued by the Safety Fire Commissioner and, if issued to a store which is a retail chain, shall be a license for each current or future store of the retail chain. Such initial license shall expire on January 31 of the year after such initial license was issued. After such initial license, such distributor may annually renew such initial license for $1,000.00 per year, payable to the Safety Fire Commissioner, provided that, if a store is a retail chain, one payment of $1,000.00 shall satisfy such license fee for each store of the retail chain. Upon finding that a distributor has met the requirements of paragraph (1) of subsection (a) of this Code section, such annual license shall be issued by the Safety Fire Commissioner and, if issued to a store which is a retail chain, shall be a license for each current or future store of the retail chain. Such annual license shall expire on January 31 of each year; provided, however, that a distributor shall not apply for an annual license earlier than 30 days prior to the expiration of an initial license or annual license.

(2) The determination by the Safety Fire Commissioner of whether a distributor has met requirements for the issuance of a license required by this subsection shall be made within 15 days of the submission of an application for any such license. Such application shall be in writing and, if the Safety Fire Commissioner provides for a written form for the application for a license pursuant to this Code section, upon such form as may be provided by the Safety Fire Commissioner. If a determination has not been made within the time provided for by this paragraph, or for an appeal of a determination by the Safety Fire Commissioner, a distributor may seek review from the

judge of the probate court of the county of the location or proposed location of the store from which consumer fireworks will be sold. Such judge may provide for the issuance or nonissuance of a license and for the payment of license fees in such manner as is consistent with the provisions of this subsection. (Code 1981, § 25-10-5.1, enacted by Ga. L. 2015, p. 274, § 4/HB 110.)

Effective date. — This Code section became effective July 1, 2015.

25-10-6. Fireworks manufactured, sold, or stored in violation of chapter declared contraband; seizure and disposition thereof.

The state fire marshal shall enforce the provisions of this chapter. Applicable fire departments of a county, municipality, or other political subdivision or a chartered fire department shall refer cases for enforcement under subsection (c) of Code Section 25-10-5.1 to the state fire marshal. All fireworks manufactured, offered for sale, exposed for sale, or stored in violation of this chapter are declared to be contraband and may be seized, taken, and removed, or caused to be removed and destroyed at the expense of the owner thereof by the state fire marshal, the Georgia State Patrol, or any sheriff or local police official. (Ga. L. 1955, p. 550, § 6; Ga. L. 1962, p. 11, § 5; Ga. L. 2015, p. 274, § 5/HB 110.)

The 2015 amendment, effective July 1, 2015, added the present first and second sentences in this Code section.

25-10-9. Penalty for illegal sale of fireworks.

Notwithstanding any provision of this chapter to the contrary, any person, firm, corporation, association, or partnership that knowingly violates this chapter may be punished by a fine not to exceed $2,500.00. Each sales transaction in violation of this chapter shall be a separate offense. (Code 1981, § 25-10-9, enacted by Ga. L. 2005, p. 596, § 3/SB 133; Ga. L. 2015, p. 274, § 6/HB 110.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of this Code section for the former provisions, which read: "Notwithstanding any provision of this chapter to the contrary, any person, firm, corporation, association, or partnership who or which knowingly violates subsection (b) of Code Section 25-10-2 may be punished by a fine not to exceed $100.00. Each sales transaction in violation of subsection (b) of Code Section 25-10-2 shall be a separate offense."

25-10-10. Prohibition on release of certain fire-propelled devices into the air and certain floating lantern devices into public water locations.

It shall be unlawful for any person, firm, corporation, association, or partnership to release or cause to be released any balloon, bag, parachute, or other similar device which requires fire underneath for propulsion or to release or cause to be released any floating water lantern or wish lantern which uses a flame to create a lighting effect in any public waterway, lake, pond, stream, or river. (Code 1981, § 25-10-10, enacted by Ga. L. 2015, p. 274, § 7/HB 110.)

Effective date. — This Code section became effective July 1, 2015.

CHAPTER 11

FIRE PROTECTION SPRINKLER CONTRACTORS

Sec.

25-11-8. Requirement that installation, repair, or other work be performed or supervised by certificate holder.

(a) No person shall act as a fire protection sprinkler contractor unless a certificate holder is employed full time, in office or on site or combination thereof, to supervise or perform the installation, repair, alteration, addition, maintenance, or inspection of water-based fire protection systems.

(b) If the only certificate holder employed by a fire protection sprinkler contractor leaves the employment of the fire protection contractor, the contractor shall notify the Commissioner in writing within 30 days. A new certificate holder must be employed by a fire protection sprinkler contractor within 30 days of such notice.

(c) No fire protection sprinkler contractor shall permit any person under his or her employment or control to install, repair, alter, maintain, or inspect any water-based fire protection system unless such person is a certificate holder or is under the direct supervision of a certificate holder employed by the contractor.

(d) Only fire protection sprinkler contractors or certificate of competency holders shall alter or renovate water-based fire protection systems except as otherwise provided by this chapter.

(e) Individuals employed by the building owner or a representative of the building owner may repair leaks, replace broken fittings, or perform other routine maintenance that does not alter the piping arrangement or operation of a water-based fire protection system.

(f) Installations shall conform to codes as adopted by the Commissioner unless otherwise permitted by this chapter or the rules and regulations promulgated pursuant to this chapter.

(g) It shall be unlawful for any person to begin installation of a fire sprinkler system on any proposed or existing building or structure which comes under the classification in paragraph (1) of subsection (b) of Code Section 25-2-13 or which comes under the jurisdiction of the office of the Commissioner of Insurance pursuant to Code Section 25-2-12 without first having drawings of the designed system approved by the appropriate authority having jurisdiction unless otherwise provided by the rules and regulations promulgated pursuant to this chapter. (Code 1981, § 25-11-5, enacted by Ga. L. 1982, p. 1212, § 1; Code 1981, § 25-11-8, as redesignated by Ga. L. 1997, p. 1698, § 1; Ga. L. 2015, p. 5, § 25/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, revised language in subsection (g).

TITLE 26

FOOD, DRUGS, AND COSMETICS

CHAPTER 2

STANDARDS, LABELING, AND ADULTERATION OF FOOD

ARTICLE 1

GENERAL PROVISIONS

26-2-4. Labeling, sale, or advertising of spring water.

(a) As used in this Code section, the term "spring water" means water which is: (1) derived from an underground formation from which water flows naturally to the surface of the earth; (2) not derived from a municipal system or public water supply; and (3) collected only at the spring or through a bore hole into the same underground water-bearing zone; provided, however, that water collected with the assistance of external force to protect the water shall retain all the physical properties of and be of the same chemical composition and quality as the water that flows naturally to the surface.

(b) Any water which meets the definition of "spring water" as specified in subsection (a) of this Code section may lawfully be labeled,

sold, advertised, and otherwise represented as "spring water" or "natural spring water," notwithstanding any other contrary provision of any law or regulation of this state. No law or regulation of this state shall: (1) require or be construed to require any disclaimer in connection with such labeling, sale, advertisement, or representation; or (2) require or be construed to require such water to be additionally identified as any other type of water. (Code 1981, § 26-2-4, enacted by Ga. L. 1992, p. 1016, § 1; Ga. L. 2015, p. 5, § 26/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted "provided, however, that water" for "provided, however, water" in subsection (a).

ARTICLE 7

MILK AND MILK PRODUCTS

26-2-231. Definitions.

(a) As used in this article, the term:

(1) "Commissioner" means the Commissioner of Agriculture for the State of Georgia.

(2) "Cream tester" means any person who performs the act of sampling or testing milk, cream, or other dairy products, the test of which is to be used as a basis for making payment for said products.

(3) "Dairy manufacturing plants" means creameries, condenseries, public dairies, butter factories, cheese factories, ice cream factories, and other like factories, and any other concerns that manufacture dairy products for sale at either retail or wholesale; provided, however, that the term dairy manufacturing plant shall not include a retail frozen dessert packager which is otherwise permitted as a food service establishment pursuant to Article 13 of this chapter.

(4) "Department" means the Department of Agriculture of the State of Georgia.

(5) Reserved.

(6) Reserved.

(7) "Manufactured milk products" means those milk products, including condensed, evaporated, concentrated, sterilized, or powdered milk, made from raw whole milk for manufacturing purposes and processed in such a manner and under such conditions as to remove or sterilize, as far as is possible, any contaminated matter contained in the raw milk from which the products were manufactured, under such rules and regulations as may be prescribed to ensure that result.

(8) Reserved.

(9) Reserved.

(10) "Person" means any individual, partnership, firm, company, or corporation.

(11) "Public dairies" means any place where milk and cream are purchased from producers and sold or kept for sale, either at wholesale or retail.

(12) "Raw whole milk for manufacturing purposes" means fluid whole milk in its natural state from healthy cows, which milk has not been produced and handled in compliance with the requirements for Grade A milk.

(13) Reserved.

(14) "Ungraded milk" means all fluid whole milk in its natural state, which milk fails to meet the requirements of Grade A milk or raw whole milk for manufacturing purposes as defined in this article.

(b) Unless otherwise defined in this article, the following words shall have the meanings respectively ascribed to them in the May, 2001, Amended Version of the Grade A Pasteurized Milk Ordinance Recommendations of the United States Public Health Service — Food and Drug Administration and supplements thereto:

(1) "Grade A buttermilk";

(2) "Grade A chocolate milk";

(3) "Grade A milk, pasteurized";

(4) "Grade A modified solids milk";

(5) "Grade A skim milk";

(6) "Grade A whole milk";

(7) "Pasteurization"; and

(8) "Raw cow's milk."

(c) Unless otherwise defined in this article, the following words shall have the meanings respectively ascribed to them in "Frozen Desserts," 21 C.F.R. Sec. 135.3, 21 C.F.R. Sec. 135.110 — 135.160 (1979):

(1) "Ice cream";

(2) "Frozen custard";

(3) Reserved;

(4) "Sherbet"; and

(5) "Water ices." (Ga. L. 1929, p. 280, § 2; Code 1933, § 42-502; Ga. L. 1935, p. 167, § 2; Ga. L. 1937, p. 725, § 1; Ga. L. 1961, p. 501, §§ 1, 3-5; Ga. L. 1980, p. 981, § 2; Ga. L. 1992, p. 1279, § 1; Ga. L. 1999, p. 638, § 1; Ga. L. 2000, p. 1291, § 1; Ga. L. 2002, p. 815, § 2; Ga. L. 2003, p. 140, § 26; Ga. L. 2015, p. 5, § 26/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, revised subsection (b) by arranging paragraphs (1) through (8) in alphabetical order.

26-2-249. Unlawful acts.

It shall be unlawful:

(1) To handle milk, cream, butter, ice cream, or other dairy products in unclean or unsanitary places or in an unsanitary manner;

(2) To keep, store, or prepare for market any milk, cream, or other dairy products in the same building or enclosure where any hide or fur or any cow, horse, nontraditional livestock, hog, or other livestock is kept;

(3) To handle or ship milk, cream, ice cream, or other dairy products in unclean or unsanitary vessels;

(4) To expose milk, cream, ice cream, or other dairy products to flies or to any contaminating influence likely to convey pathogenic or other injurious bacteria;

(5) For any common carrier, railway, or express company to neglect or fail to remove or ship from its depot, on the day of its arrival there for shipment, any milk, cream, or other dairy products left at the depot for transportation;

(6) For any common carrier, railway, or express company to allow merchandise of a contaminating nature to be stored on or with dairy products;

(7) To use or possess any branded or registered cream can or milk can or ice cream container for any purpose other than the handling, storing, or shipping of milk, cream, or ice cream; provided, however, that no person other than the rightful owner thereof shall use or possess any can, bottle, or other receptacle if such receptacle shall be marked with the brand or trademark of the owner. Nothing in this paragraph shall prohibit the temporary possession by a business involved in the normal processing, distribution, or retail sale of dairy products of any can, bottle, or other receptacle which is marked with the brand or trademark of another person or entity prior to its return to the rightful owner in the normal course of business, or if purchased from the rightful owner;

(8) To sell or offer for sale ice cream from a container or a compartment of a cabinet or fountain which contains any article of food other than ice cream or dairy products;

(9) To sell or offer for sale milk, cream, butter, cheese, ice cream, or other dairy products that are not pure and fresh and handled with clean utensils;

(10) To sell or offer for sale milk or cream from diseased or unhealthy animals or which was handled by any person suffering from or coming in contact with persons affected with any contagious disease;

(11) To sell or offer for sale any milk or cream which shall have been exposed to contamination or into which shall have fallen any unsanitary articles or any foreign substance which would render the milk or cream or the product manufactured therefrom unfit for human consumption; or

(12) To sell or offer for sale milk, cream, butter, cheese, ice cream, or other dairy products which do not comply with the standards and requirements of this article or the rules and regulations promulgated hereunder. (Ga. L. 1929, p. 280, § 7; Code 1933, § 42-508; Ga. L. 1935, p. 167, § 2; Ga. L. 1980, p. 981, § 16; Ga. L. 1995, p. 244, § 29; Ga. L. 1996, p. 1219, § 18; Ga. L. 2000, p. 1298, § 1; Ga. L. 2008, p. 458, § 25/SB 364; Ga. L. 2015, p. 5, § 26/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, inserted "or" at the end of paragraph (11).

ARTICLE 8

EGGS

26-2-261. Classification of eggs.

(a) Within the intent and purpose of this article, eggs classified as:

(1) Storage eggs shall be construed to mean eggs which have been in cold storage for a period of 31 days or longer; and

(2) Fresh eggs shall be construed to mean eggs which have been held in cold storage not longer than 30 days from the date they were packed.

(b) Each container of eggs must be labeled to show size or weight class and standard of quality.

(c) All eggs sold or offered for sale by dealers, as designated by this article, shall be graded as to net weight and standards of quality.

(1) The size or weight classes shall be:

Size or Weight Classes	Minimum Net Wt. Per Doz. (Oz.)	Min. Net. Wt. For Indv. Eggs at Rate Per Doz. (Oz.)	Min. Net Wt. Per 30 Doz. (Lbs.)
Jumbo	30	29	56
Extra Large	27	26	50 1/2
Large	24	23	45
Medium	21	20	39 1/2
Small	18	17	34
Pee Wee	15	14	28

The weight tolerance, per dozen, where eggs are sold at retail, shall be not more than two eggs of the minimum net weight for individual eggs at the rate per dozen. Not more than 5 percent tolerance of the minimum net weight for individual eggs at the rate per dozen shall be allowed where eggs are sold in wholesale lots.

(2) The quality classifications for individual eggs shall be:

(A) Grade AA:

(i) Shell: clean, unbroken, practically normal.

(ii) Air cell: one-eighth inch or less in depth, unlimited movement, and free or bubbly.

(iii) Yolk: outline slightly defined, practically free from defects.

(iv) White: firm, clear.

(B) Grade A:

(i) Shell: clean, unbroken, practically normal.

(ii) Air cell: three-sixteenths inch or less in depth, unlimited movement, and free or bubbly.

(iii) Yolk: outline fairly well defined, practically free from defects.

(iv) White: reasonably firm, clear.

(C) Grade B:

(i) Shell: clean to slightly stained (but not more than one thirty-second of surface if localized or one-sixteenth of surface if scattered), unbroken, abnormal.

(ii) Air cell: over three-sixteenths inch in depth, unlimited movement, and free or bubbly.

(iii) Yolk: outline plainly visible, enlarged and flattened, clearly visible germ development but no blood, other serious defects.

(iv) White: weak and watery, small blood and meat spots present (but not more than one-eighth inch in diameter aggregate).

(d) The U.S. Standards, Grades, and Weight Classes for Shell Eggs, Part 56, Subpart C, Paragraphs 56,216 and 56,217 established pursuant to the federal Agricultural Marketing Act of 1946 are adopted by reference.

(e) All of the classifications indicated in this Code section shall be determined by candling. (Ga. L. 1935, p. 364, § 1; Ga. L. 1937, p. 639, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 49, §§ 1-3; Ga. L. 1956, p. 21, § 1; Ga. L. 1958, p. 27, § 1; Ga. L. 1991, p. 1115, § 1; Ga. L. 2015, p. 5, § 26/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, inserted "and" at the end of paragraph (a)(1).

ARTICLE 9

GRAINS AND BREAD

26-2-296. Duties of Commissioner of Agriculture.

(a) The Commissioner of Agriculture is authorized as the administrative agency and is directed:

(1) To make, amend, and rescind such rules and regulations, in his discretion, as may be necessary to carry out this article, including, but without being limited to, such orders, rules, and regulations as he is hereinafter specifically authorized and directed to make; and

(2) From time to time to adopt, in his discretion, such regulations changing or adding to the required ingredients for flour, bread, corn meal, or grits, specified in Code Sections 26-2-291 through 26-2-293, as shall be necessary to conform to the definitions and standards of identity of enriched flour, enriched bread, enriched degerminated corn meal, and enriched degerminated hominy grits, from time to time promulgated by the rules and regulations made by the Commissioner.

(b) All orders, rules, and regulations adopted by the Department of Agriculture pursuant to this article shall be published as provided for in subsection (c) of this Code section, and, within the limits specified by this article, shall become effective upon such date as the Commissioner shall fix.

(c) Whenever under this article publication of any notice, order, rule, or regulation is required, such publication shall be made at least three times in ten days in newspapers of general circulation in three different sections of the state.

(d) The Commissioner is authorized to collect samples for analysis and to conduct examinations and investigations for the purposes of this article through any officers or employees under his supervision; and all such officers and employees shall have authority to enter to inspect any factory, mill, warehouse, shop, or establishment where flour, bread, corn meal, or grits is manufactured, processed, packed, sold, or held, or to inspect any vehicle and any flour, bread, corn meal, or grits therein, and all pertinent equipment, materials, containers, and labeling. (Ga. L. 1945, p. 425, § 7; Ga. L. 2015, p. 5, § 26/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted "; and" for a concluding period at the end of paragraph (a)(1).

CHAPTER 3

STANDARDS, LABELING, AND ADULTERATION OF DRUGS AND COSMETICS

Sec.
26-3-8. When a drug or device deemed misbranded.

26-3-8. When a drug or device deemed misbranded.

(a) A drug or device shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If in package form unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor; and

(B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the State Board of Pharmacy;

(3) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with conspicuousness as compared with other words, statements, designs, or devices in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alphaeucaine, barbituric acid, betaeucaine,

bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, sulfonmethane, or any chemical derivative of such substance which has been found after investigation by the State Board of Pharmacy to be and by regulations under this chapter designated as habit forming, or any synthetic narcotic or drug unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning — May be habit forming";

(5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:

(A) The common or usual name of the drug if there is such; and

(B) In case it is fabricated from two or more ingredients, the common or usual name of each active ingredient including the kind and quantity or proportion of any alcohol and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substance contained therein, provided that to the extent that compliance with the requirements of this subparagraph is impracticable, exemptions shall be established by regulations promulgated by the State Board of Pharmacy;

(6)(A) Unless its labeling bears:

(i) Adequate directions for use; and

(ii) Adequate warnings against use by children or in those pathological conditions where its use may be dangerous to health or against unsafe dosage or methods or duration of administration or application in such manner and form as are necessary for the protection of users.

(B) Where any requirement of division (i) of subparagraph (A) of this paragraph as applied to any drug or device is not necessary for the protection of the public health, the State Board of Pharmacy shall promulgate regulations exempting such drug or device from such requirements;

(7) If it is purported to be a drug the name of which is recognized in an official compendium unless it is packaged and labeled as prescribed therein, provided that the method of packing may be modified with consent of the State Board of Pharmacy. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect

to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia;

(8) If it has been found by the State Board of Pharmacy to be a drug liable to deterioration unless it is packaged in such form and manner and its label bears a statement or such precautions as the State Board of Pharmacy shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the State Board of Pharmacy shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements;

(9)(A) If it is a drug and its container is so made, formed, or filled as to be misleading;

(B) If it is an imitation of another drug; or

(C) If it is offered for sale under the name of another drug;

(10) If it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof; or

(11) If it is a drug intended for use by man which:

(A) Is a habit-forming drug to which paragraph (4) of this subsection applies;

(B) Because of its toxicity or other potentiality for harmful effect, the method of use, or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(C) Is limited by an effective application under Section 505 of the federal act to use under the professional supervision of a practitioner licensed by law to administer such drug unless it is dispensed only:

(i) Upon a written prescription of a practitioner licensed by law to administer such drug;

(ii) Upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist; or

(iii) By refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist.

(b) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of this Code section except paragraphs (1) and (9) of subsection (a) of this Code section if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the patient and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or to a drug dispensed in violation of paragraph (11) of subsection (a) of this Code section. (Ga. L. 1906, p. 83, § 5; Civil Code 1910, § 2104; Ga. L. 1913, p. 44, §§ 1, 2; Code 1933, § 42-110; Ga. L. 1947, p. 1463, § 2; Ga. L. 1961, p. 529, § 10; Code 1933, § 79A-1009, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1984, p. 22, § 26; Ga. L. 1985, p. 149, § 26; Ga. L. 2015, p. 5, § 26/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, inserted "or" at the end of paragraph (a)(10).

CHAPTER 4

PHARMACISTS AND PHARMACIES

Article 1

General Provisions

Sec.

Article 2

State Board of Pharmacy

Article 5

Prescription Drugs

Article 6

Pharmacies

ARTICLE 1

GENERAL PROVISIONS

26-4-5. Definitions.

As used in this chapter, the term:

(1) "Administer" or "administration" means the provision of a unit dose of medication to an individual patient as a result of the order of an authorized practitioner of the healing arts.

(1.1) "Biological product" means a biological product as defined in subsection (i) of section 351 of the Public Health Service Act, 42 U.S.C. Section 262.

(2) "Board of pharmacy" or "board" means the Georgia State Board of Pharmacy.

(3) "Brand name drug" means the proprietary, specialty, or trade name used by a drug manufacturer for a generic drug and placed upon the drug, its container, label, or wrapping at the time of packaging.

(3.1) "Cognizant member" means that member of the Georgia State Board of Pharmacy who is charged with conducting investigative interviews relating to investigations involving licensees, registrants, and permit holders.

(4) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug by a pharmacist or pharmacy licensed or registered by the board or by a practitioner in compliance with rules established by the board regarding pharmaceutical compounding:

(A) As the result of a practitioner's prescription drug order or initiative for a specific patient based on the relationship between the practitioner, patient, and pharmacist in the course of professional practice;

(B) For use by a practitioner in the administration of a dangerous drug or controlled substance to a patient in his or her professional practice office or setting;

(C) For use within the hospital or health system in which the pharmacy is located or in which the practitioner or pharmacist

practices or for use within clinics or other entities owned or operated by such hospital or health system; or

(D) For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing.

Compounding also includes the preparation of drugs in anticipation of prescription drug orders based on routine and regularly observed prescribing patterns.

(5) "Confidential information" means information maintained by the pharmacist in the patient's records or which is communicated to the patient as part of patient counseling which is privileged and may be released only to the patient or, as the patient directs, to those practitioners and other pharmacists where, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being; and to such other persons or governmental agencies authorized by law to receive such confidential information.

(6) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of Code Sections 16-13-25 through 16-13-29, Schedules I through V of 21 C.F.R. Part 1308, or both.

(7) "Dangerous drug" means any drug, substance, medicine, or medication as defined in Code Section 16-13-71.

(8) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for a consideration.

(9) "Device" means an instrument, apparatus, contrivance, or other similar or related article, including any component part or accessory, which is required under federal law to bear the label, "Caution: federal or state law requires dispensing by or on the order of a physician."

(10) "Dispense" or "dispensing" means the preparation and delivery of a drug or device to a patient, patient's caregiver, or patient's agent pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

(11) "Distribute" means the delivery of a drug or device other than by administering or dispensing.

(12) "Drug" means:

(A) Articles recognized as drugs in any official compendium, or supplement thereto, designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(B) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(C) Articles, other than food, intended to affect the structure or any function of the body of humans or animals; and

(D) Articles intended for use as a component of any articles specified in subparagraph (A), (B), or (C) of this paragraph but does not include devices.

(13) "Drug regimen review" includes but is not limited to the following activities:

(A) Evaluation of any prescription drug order and patient record for:

(i) Known allergies;

(ii) Rational therapy-contraindications;

(iii) Reasonable dose and route of administration; and

(iv) Reasonable directions for use;

(B) Evaluation of any prescription drug order and patient record for duplication of therapy;

(C) Evaluation of any prescription drug order and patient record for the following interactions:

(i) Drug-drug;

(ii) Drug-food;

(iii) Drug-disease; and

(iv) Adverse drug reactions; and

(D) Evaluation of any prescription drug order and patient record for proper utilization, including overutilization or underutilization, and optimum therapeutic outcomes.

(14) "Drug researcher" means a person, firm, corporation, agency, department, or other entity which handles, possesses, or utilizes controlled substances or dangerous drugs, as defined in Chapter 13 of Title 16, for purposes of conducting research, drug analysis, animal training, or drug education, as such purposes may be further defined by the board, and is not otherwise registered as a pharmacist, pharmacy, drug wholesaler, distributor, supplier, or medical practitioner.

(14.1) "Electronic data prescription drug order" means any digitalized prescription drug order transmitted to a pharmacy, by a means other than by facsimile, which contains the secure, personal-

ized digital key, code, number, or other identifier used to identify and authenticate the prescribing practitioner in a manner required by state laws and board regulations and includes all other information required by state laws and board regulations. "Electronic data prescription drug order" also includes any digitalized prescription drug order transmitted to a pharmacy that is converted into a visual image of a prescription order during the transmission process, is received by the pharmacy through a facsimile, and includes the practitioner's electronic signature.

(14.2) "Electronic data signature" means:

(A) A secure, personalized digital key, code, number, or other identifier used for secure electronic data transmissions which identifies and authenticates the prescribing practitioner as a part of an electronic data prescription drug order transmitted to a pharmacy; or

(B) An electronic symbol or process attached to or logically associated with a record and executed or adopted by a prescribing practitioner with the intent to sign an electronic data prescription drug order, which identifies the prescribing practitioner, as a part of an electronic data prescription drug order transmitted to a pharmacy.

(14.3) "Electronic signature" means an electronic visual image signature or an electronic data signature of a practitioner which appears on an electronic prescription drug order.

(14.4) "Electronic visual image prescription drug order" means any exact visual image of a prescription drug order issued by a practitioner electronically and which bears an electronic reproduction of the visual image of the practitioner's signature, is either printed on security paper and presented as a hard copy to the patient or transmitted by the practitioner via facsimile machine or equipment to a pharmacy, and contains all information required by state law and regulations of the board.

(14.5) "Electronic visual image signature" means any exact visual image of a practitioner's signature reproduced electronically on a hard copy prescription drug order presented to the patient by the practitioner or is a prescription drug order transmitted to a pharmacy by a practitioner via facsimile machine or equipment.

(15) "Emergency service provider" means licensed ambulance services, first responder services or neonatal services, or any combination thereof.

(15.1) "Executive director" means the executive director appointed by the Georgia State Board of Pharmacy pursuant to Code Section 26-4-20.

(16) "Extern" or "pharmacy extern" means an individual who is a student currently enrolled in an approved school or college of pharmacy and who has been assigned by the school or college of pharmacy to a licensed pharmacy for the purposes of obtaining practical experience and completing a degree in pharmacy. For the purposes of this chapter, a pharmacy extern may engage in any activity or perform any function which a pharmacy intern may perform under the direct supervision of a licensed pharmacist.

(17) "Federal act" or "Federal Food, Drug, and Cosmetic Act" means the Federal Food, Drug, and Cosmetic Act of the United States of America, approved June 25, 1938, officially cited as Public Document 717, 75th Congress (Chapter 675-3rd Sess.) and all amendments thereto, and all regulations promulgated thereunder by the commissioner of the Federal Food and Drug Administration.

(18) "Generic name" means a chemical name, a common or public name, or an official name used in an official compendium recognized by the Federal Food, Drug, and Cosmetic Act, as amended.

(18.05) "Hard copy prescription drug order" means a written, typed, reproduced, or printed prescription drug order prepared on a piece of paper.

(18.1) "Institution" means any licensed hospital, nursing home, assisted living community, personal care home, hospice, health clinic, or prison clinic.

(18.2) "Interchangeable biological product" means a biological product that the federal Food and Drug Administration has determined meets the standards set forth in subsection (k)(4) of 42 U.S.C. Section 262 or has been deemed therapeutically equivalent by the federal Food and Drug Administration.

(19) "Intern" or "pharmacy intern" means an individual who is:

(A) A student who is currently enrolled in an approved school or college of pharmacy, has registered with the board, and has been licensed as a pharmacy intern;

(B) A graduate of an approved school or college of pharmacy who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

(C) An individual who does not otherwise meet the requirements of subparagraph (A) or (B) of this paragraph and who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate and is currently licensed by the board for the purpose of obtaining

practical experience as a requirement for licensure as a pharmacist.

(20) Reserved.

(21) "Labeling" means the process of preparing and affixing a label to any drug container exclusive, however, of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal, state, or federal and state law or rule.

(22) "Manufacturer" means a person engaged in the manufacturing of drugs or devices.

(23) "Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of any substance or labeling or relabeling of its container and the promotion and marketing of such drugs or devices. Manufacturing also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

(23.5) "Narcotic treatment program clinic pharmacy" means a pharmacy which is attached to, located in, or otherwise a part of and operated by a narcotic treatment program which provides an opiate replacement treatment program, as designated or defined by the Department of Behavioral Health and Developmental Disabilities or such other state agency as may be designated as the state authority for the purposes of implementing the narcotic treatment program authorized by federal and state laws and regulations.

(24) "Nonprescription drug" means a drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of this state and the federal government.

(25) "Patient counseling" means the oral communication by the pharmacist of information, as defined in the rules of the board, to the patient, patient's caregiver, or patient's agent, in order to improve therapy by ensuring proper use of drugs and devices.

(26) "Person" means an individual, corporation, partnership, or association.

(27) "Pharmaceutically equivalent" means drug products that contain identical amounts of the identical active ingredient, in identical dosage forms, but not necessarily containing the same inactive ingredients.

(28) "Pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacy. This recognizes a pharmacist as a learned professional who is authorized to provide patient services and pharmacy care.

(29) "Pharmacist in charge" means a pharmacist currently licensed in this state who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of such pharmacy and personnel.

(30) "Pharmacy" means:

(A) The profession, art, and science that deals with pharmacy care, drugs, or both, medicines, and medications, their nature, preparation, administration, dispensing, or effect; or

(B) Any place licensed in accordance with this chapter wherein the possessing, displaying, compounding, dispensing, or selling of drugs may be conducted, including any and all portions of the building or structure leased, used, or controlled by the licensee in the conduct of the business or profession licensed by the board at the address for which the license was issued.

(31) "Pharmacy care" means those services related to the interpretation, evaluation, or dispensing of prescription drug orders, the participation in drug and device selection, drug administration, and drug regimen reviews, and the provision of patient counseling related thereto.

(32) "Pharmacy technician" means those support persons utilized in pharmacies whose responsibilities are to provide nonjudgmental technical services concerned with the preparation for dispensing of drugs under the direct supervision and responsibility of a pharmacist.

(33) "Practitioner" or "practitioner of the healing arts" means a physician, dentist, podiatrist, optometrist, or veterinarian and shall include any other person licensed under the laws of this state to use, mix, prepare, dispense, prescribe, and administer drugs in connection with medical treatment to the extent provided by the laws of this state.

(34) "Preceptor" means an individual who is currently licensed as a pharmacist by the board, meets the qualifications as a preceptor under the rules of the board, and participates in the instructional training of pharmacy interns.

(35) "Prescription drug" or "legend drug" means a drug which, under federal law, is required, prior to being dispensed or delivered,

to be labeled with either of the following statements: "Caution: federal law prohibits dispensing without prescription" or "Caution: federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or a drug which is required by any applicable federal or state law or rule to be dispensed pursuant only to a prescription drug order or is restricted to use by practitioners only; or a controlled substance, as defined in paragraph (6) of this Code section or a dangerous drug as defined in paragraph (7) of this Code section.

(36) "Prescription drug order" means a lawful order of a practitioner for a drug or device for a specific patient; such order includes an electronic visual image prescription drug order and an electronic data prescription drug order.

(37) "Prospective drug use review" means a review of the patient's drug therapy and prescription drug order, as defined in the rules of the board, prior to dispensing the drug as part of a drug regimen review.

(37.1) "Remote automated medication system" means an automated mechanical system that is located in a skilled nursing facility or hospice licensed as such pursuant to Chapter 7 of Title 31 that does not have an on-site pharmacy and in which medication may be dispensed in a manner that may be specific to a patient.

(37.2) "Remote order entry" means the entry made by a pharmacist located within the State of Georgia from a remote location indicating that the pharmacist has reviewed the patient specific drug order for a hospital patient, has approved or disapproved the administration of the drug for such patient, and has entered the information in the hospital's patient record system.

(38) "Reverse drug distributor" means a person, firm, or corporation which receives and handles drugs from within this state which are expired, discontinued, adulterated, or misbranded, under the provisions of Chapter 3 of this title, the "Georgia Drug and Cosmetic Act," from a pharmacy, drug distributor, or manufacturer for the purposes of destruction or other final disposition or for return to the original manufacturer of a drug.

(38.5) "Security paper" means:

(A) A prescription pad or paper that has been approved by the board for use and contains the following characteristics:

(i) One or more industry recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(ii) One or more industry recognized features designed to prevent the erasure or modification of information written on the prescription form by the practitioner; and

(iii) One or more industry recognized features designed to prevent the use of counterfeit prescription forms; or

(B) A prescription pad or paper that is an approved prescription pad or paper of the Centers for Medicare and Medicaid Services on January 1, 2013.

(39) "Significant adverse drug reaction" means a drug related incident that may result in serious harm, injury, or death to the patient.

(40) "Substitution" means to dispense pharmaceutically equivalent and therapeutically equivalent drug products as regulated by the board in place of the drug prescribed.

(40.5) "USP-NF" means the United States Pharmacopeia and National Formulary.

(41) "Wholesale distributor" means any person engaged in wholesale distribution of drugs, including but not limited to manufacturers; repackagers; own label distributors; private label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail and hospital pharmacies that conduct wholesale distributions. (Code 1981, § 26-4-5, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 1999, p. 277, § 1.1; Ga. L. 2000, p. 1706, § 22; Ga. L. 2004, p. 738, §§ 2, 3; Ga. L. 2007, p. 47, § 26/SB 103; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2010, p. 266, § 1/SB 195; Ga. L. 2011, p. 227, § 7/SB 178; Ga. L. 2011, p. 308, § 5/HB 457; Ga. L. 2011, p. 659, § 3/SB 36; Ga. L. 2012, p. 1092, § 1A/SB 346; Ga. L. 2013, p. 127, § 1/HB 209; Ga. L. 2013, p. 192, § 1-1/HB 132; Ga. L. 2015, p. 5, § 26/HB 90; Ga. L. 2015, p. 585, § 1/SB 194; Ga. L. 2015, p. 1209, § 1/SB 51.)

The 2015 amendments. — The first 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, corrected a misspelling of "similar" in paragraph (9). The second 2015 amendment, effective July 1, 2015, inserted "optometrist," in paragraph (33). The third 2015 amendment, effective July 1, 2015, added paragraphs (1.1) and (18.2).

26-4-6. Provisions of chapter not applicable to facilities engaged solely in distribution of dialysate drugs or certain dialysis equipment under certain conditions.

The provisions of this chapter shall not apply to a facility engaged solely in the distribution of dialysate drugs, or devices necessary to perform home kidney dialysis to patients with end stage renal disease, provided that the following criteria are met:

(1) The dialysate drugs, or devices are approved or cleared by the federal Food and Drug Administration as required by federal law;

(2) The dialysate drugs, or devices are lawfully held by a manufacturer or manufacturer's agent that is properly registered with the board as a manufacturer or wholesale distributor;

(3) The dialysate drugs, or devices are held and delivered in their original, sealed packaging from the manufacturing facility;

(4) The dialysate drugs, or devices are delivered only by the manufacturer or the manufacturer's agent and only upon receipt of a physician's order; and

(5) The manufacturer or manufacturer's agent delivers the dialysate drugs, or devices directly to:

(A) A patient with end stage renal disease or such patient's designee for the patient's self-administration of the dialysis therapy; or

(B) A health care provider or institution for administration or delivery of the dialysis therapy to a patient with end stage renal disease. (Code 1981, § 26-4-6, enacted by Ga. L. 2015, p. 585, § 2/SB 194.)

Effective date. — This Code section became effective July 1, 2015.

ARTICLE 2

STATE BOARD OF PHARMACY

26-4-21. Eligibility requirements for board members; oath of office.

(a) Each of the seven pharmacist members of the board shall, at the time of appointment:

(1) Be a resident of this state for not less than six months;

(2) Be currently licensed and in good standing to engage in the practice of pharmacy in this state;

(3) Be actively engaged in the practice of pharmacy in this state;

(4) Have five years of experience in the practice of pharmacy in this state after licensure; and

(5) Not be officially employed as a full-time faculty member by any school or college of pharmacy.

(b) The one consumer member of the board shall be a resident of Georgia who has attained the age of majority and shall not have any connection whatsoever with the pharmaceutical industry.

(c) Appointees to the board shall immediately after their appointment take and subscribe to an oath or affirmation before a qualified officer that they will faithfully and impartially perform the duties of the office, and the oath shall be filed with the office of the Governor, whereupon the office of the Governor shall issue to each appointee a certificate of appointment. (Code 1981, § 26-4-21, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 2013, p. 192, § 1-3/HB 132; Ga. L. 2015, p. 5, § 26/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, revised language in subsection (c).

26-4-28. Powers, duties, and authority.

(a) The board shall have the power, duty, and authority for the control and regulation of the practice of pharmacy in the State of Georgia including, but not limited to, the following:

(1) The licensing by examination or by license transfer of applicants who are qualified to engage in the practice of pharmacy under the provisions of this chapter;

(2) The renewal of licenses to engage in the practice of pharmacy;

(3) The establishment and enforcement of compliance with professional standards and rules of conduct of pharmacists engaged in the practice of pharmacy;

(4) The determination and issuance of standards for recognition and approval of degree programs of schools and colleges of pharmacy whose graduates shall be eligible for licensure in this state, and the specification and enforcement of requirements for practical training including internship;

(5) The enforcement of those provisions of this chapter relating to the conduct or competence of pharmacists practicing in this state and the suspension, revocation, or restriction of licenses to engage in the practice of pharmacy;

(6) The licensure and regulation of pharmacies and pharmacy interns;

(7)(A) The regulation of other employees in the prescription or pharmacy department, including but not limited to the registration and regulation of pharmacy technicians. The board shall be required to establish the minimum qualifications for the registration

of pharmacy technicians and shall be authorized to require the completion of a background check and criminal history record check for each person applying for registration as a pharmacy technician in this state. The certificate of registration, once issued, may be valid for no more than two years and shall be renewable biennially upon payment of a renewal fee and compliance with such other conditions as the board may establish by rule or regulation. The board shall be authorized to deny registration, to deny renewal, or to revoke or suspend the registration of a pharmacy technician for any of the grounds set forth in Code Section 26-4-60 or Code Section 43-1-19. However, said denial of a technician application, denial of the renewal of a certificate, or suspension or revocation of a technician registration shall not be considered a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," but said applicant or registrant shall be entitled to an appearance before the board. The board shall be required to establish and maintain a registry of pharmacy technicians in this state which contains the name and home address of each pharmacy technician and his or her employer and location of employment. The board shall establish a process by which the pharmacist in charge of each pharmacy shall provide updated information on the pharmacy technicians in the pharmacy. The board may establish and collect fees from pharmacy technicians, their employers, or both for the registration of pharmacy technicians and maintenance of the registry.

(B)(i) In enforcing this paragraph, the board may, upon reasonable grounds, require a registrant or applicant to submit to a mental or physical examination by licensed health care providers designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-9-21. Every person who shall accept the privilege of practicing as a pharmacy technician in this state or who shall file an application for a certificate of registration to practice pharmacy in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board, upon the grounds that the same constitutes a privileged communication. If a registrant or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any registrant or applicant who is prohibited from practicing as a pharmacy

technician under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin practicing as a pharmacy technician with reasonable skill and safety to patients.

(ii) For the purposes of this paragraph, the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a registrant or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-9-21. Every person who shall accept the privilege of practicing as a pharmacy technician in this state or who shall file an application for a certificate of registration to practice as a pharmacy technician in this state shall be deemed to have given his or her consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board, upon the grounds that the same constitutes a privileged communication.

(iii) If any registrant or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in division (i) of this subparagraph or the records relating to the mental or physical condition of such registrant or applicant obtained pursuant to division (ii) of this subparagraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any registrant or applicant in any other type of proceeding;

(8) The collection of professional demographic data;

(9) The right to seize any such drugs and devices found by the board to constitute an imminent danger to the public health and welfare;

(10) The establishment of minimum specifications for the physical facilities, technical equipment, environment, supplies, personnel, and procedures for the storage, compounding, and dispensing of such drugs or devices utilized within the practice of pharmacy;

(11) The establishment of minimum standards for the purity and quality of such drugs utilized within the practice of pharmacy;

(12) The establishment of minimum standards for the purity and quality of such devices and other materials utilized within the practice of pharmacy;

(12.1)(A) The licensure for the use of remote automated medication systems and the regulation and establishment of minimum standards for the use and operation of remote automated medication systems to ensure safe and efficient dispensing, including, but not limited to, appropriate security measures, requirements for skilled nursing facilities and hospices that utilize such systems, training requirements, accuracy and quality assurance measures, recordkeeping requirements, and such other appropriate requirements as determined by the board.

(B) The regulation and establishment of minimum standards for the use and operation of remote automated medication systems by the board as provided for in subparagraph (A) of this paragraph shall permit a pharmacy technician registered pursuant to this chapter to fill a remote automated medication system. If the remote automated medication system utilizes radio frequency identification or bar coding in the filling process, the pharmacy shall retain an electronic record of the filling activities of the pharmacy technician. If the remote automated medication system does not utilize radio frequency identification or bar coding in the filling process, a pharmacist shall supervise continuously the filling activities of the pharmacy technician through a two-way audiovisual system.

(C) The board may establish rules and regulations to implement the requirements of this paragraph;

(13) The issuance and renewal of licenses of all persons engaged in the manufacture and distribution of drugs;

(14) The issuance and renewal of licenses of all persons engaged in the manufacture and distribution of devices utilized within the practice of pharmacy;

(15) The inspection of any licensed person at all reasonable hours for the purpose of determining if any provisions of the laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board and its officers, agents, and designees shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to drugs, devices, and the practice of pharmacy;

(16) The investigation of alleged violations of this chapter or any other law in this state pertaining to, or in connection with, persons or firms licensed by the board or otherwise authorized by the laws of this state to manufacture, sell, distribute, dispense, or possess drugs, medicines, poisons, cosmetics, or devices, as related to misbranded or counterfeit drugs, or any rules and regulations promulgated by the board under this chapter; the conducting of investigative interviews or full board hearings, with or without the necessity of utilizing the

Office of State Administrative Hearings, in respect thereto when in its discretion it appears to be necessary; and the bringing of such violations to the notice of the Attorney General;

(17) The listing at any time upon either a list under Article 3 of Chapter 13 of Title 16, the "Dangerous Drug Act," or upon a schedule under Article 2 of Chapter 13 of Title 16, the "Georgia Controlled Substances Act," of any drug found to be potentially dangerous to public safety if dispensed without prescription;

(18) The expunging of the pharmacy related practice record of any pharmacist whose record consists of a sole sanction resulting from alcohol impairment and whose pharmacy related practice record during a five-year time period dating from the time of the sanction has incurred no additional charges or infractions;

(19) Restricting the inspection or examination of records or access to any area licensed and under the control of any registrant, which has been issued a permit by the board, to members of the board, agents for the Georgia Drugs and Narcotics Agency, the United States Drug Enforcement Administration, the Department of Community Health, or other federal agencies or agencies of this state otherwise entitled to such inspections or examinations by law, subpoena, or court order. This paragraph specifically prohibits inspections or examinations of board registrants or any requirement which forces board registrants to allow inspection or examination, or both, of their records by representatives for any nongovernment affiliated, private organization for any purpose since the access of patient prescription records is restricted by this chapter and access by such private organizations is unnecessary in that this access only duplicates existing record-keeping and inspection requirements already addressed by the laws and regulations of the board and other government organizations. This restriction shall also prohibit a private, nongovernment affiliated organization from examining or copying continuing education certificates maintained by individual registrants. Nothing in this paragraph shall prohibit the pharmacist in charge from voluntarily allowing appropriate agencies and organizations to inspect or examine the records and pharmacy area under the control of the pharmacist in charge provided such inspections or examinations are for the purposes of ensuring the quality of care provided to patients;

(20) The requiring of background checks, including, but not limited to, criminal history record checks, on any persons or firms applying for licensure or registration pursuant to this chapter;

(21) Serving as the sole governmental or other authority which shall have the authority to approve or recognize accreditation or

certification programs for specialty pharmacy practice or to determine the acceptability of entities which may accredit pharmacies or certify pharmacists in a specialty of pharmacy practice, and the board may require such accreditation or certification as a prerequisite for specialty or advanced pharmacy practice. Such accreditation and certification standards for specialties shall be set forth in rules promulgated by the board with such rules to contain the required qualifications or limitations. Any accreditation or certification for specialty pharmacy practice approved or recognized by the board shall be deemed sufficient to meet any and all standards, licensure, or requirements, or any combination thereof, otherwise set forth by any private entity or other government agency to satisfy its stated goals and standards for such accreditation or certification. Nothing in this paragraph shall prohibit private entities, government agencies, professional organizations, or educational institutions from submitting accreditation or certification programs for the review and potential approval or recognition by the board. Accreditation and certification for specialty pharmacy practice under this paragraph shall be subject to the following conditions:

(A) Applications shall be submitted as set forth in rules promulgated or approved by the board for accreditation or certification;

(B) Only a pharmacist registered by this state and maintaining an active license in good standing is eligible for certification in a specialty pharmacy practice by the board;

(C) Only a pharmacy registered by this state and maintaining an active license in good standing is eligible for accreditation for specialty pharmacy practice by the board;

(D) Any board approved or recognized accreditation for a specialty pharmacy practice of a pharmacy is to be deemed sufficient and shall satisfy any standards or qualifications required for payment of services rendered as set forth by any insurance company, carrier, or similar third-party payor plan in any policy or contract issued, issued for delivery, delivered, or renewed on or after July 1, 1999;

(E) Any board approved or recognized specialty certification issued to a pharmacist is deemed sufficient and shall satisfy any standards or qualifications required for payment of services rendered as set forth by any insurance company, carrier, or similar third-party payor plan in any policy or contract issued, issued for delivery, delivered, or renewed on or after July 1, 1999; and

(F) The board may deny, revoke, limit, suspend, probate, or fail to renew the accreditation or specialty certification of a pharmacy, pharmacist, or both for cause as set forth in Code Section 26-4-60

or for a violation of Chapter 13 of Title 16 or if the board determines that a pharmacy, pharmacist, or both no longer meet the accreditation or certification requirements of the board. Before such action, the board shall serve upon the pharmacist in charge of a pharmacy or pharmacist an order to show cause why accreditation or certification should not be denied, revoked, limited, suspended, or probated or why the renewal should not be refused. The order to show cause shall contain a statement for the basis therefor and shall call upon the pharmacist in charge of a pharmacy, the pharmacist, or both to appear before the board at a time and place not more than 60 days after the date of the service of the order;

(22) To adopt a seal by which the board shall authenticate the acts of the board;

(23) To keep a docket of public proceedings, actions, and filings;

(24) To set its office hours;

(25) To require licensees and permit holders to report a change of business address or personal address within ten days of the change in either address;

(26) To adopt necessary rules concerning proceedings, hearings, review hearings, actions, filings, depositions, and motions related to uncontested cases;

(27)(A) To authorize the Georgia Drugs and Narcotics Agency to conduct inspections and initiate investigations on its behalf for the purpose of discovering violations of this chapter, Chapter 3 of this title, and Chapter 13 of Title 16.

(B) When conducting investigations and inspections on behalf of the board, the Georgia Drugs and Narcotics Agency shall have the same access to and may examine any relevant writing, document, or other material relating to any licensee, registrant, permittee, or applicant as the board. The executive director may issue subpoenas to compel access to any writing, document, or other material upon a determination that reasonable grounds exist for the belief that a violation of this chapter, Chapter 3 of this title, Chapter 13 of Title 16, or any other law relating to the practice of pharmacy may have taken place. The results of all investigations and inspections initiated by the Georgia Drugs and Narcotics Agency which relate to an individual licensed or permitted by the board shall be reported by the Georgia Drugs and Narcotics Agency to the board, and the records of such investigations shall be kept for the board by the director of the Georgia Drugs and Narcotics Agency, and the board shall retain the right to have access to such records at any time. Notwithstanding the provisions of this subparagraph, Code

Section 16-13-60 shall control the access to or release of information.

(C) Nothing in this chapter shall be construed to prohibit or limit the authority of the executive director or the director of the Georgia Drugs and Narcotics Agency to conduct inspections and initiate investigations on its own initiative for the purpose of discovering violations of this chapter, Chapter 3 of this title, and Chapter 13 of Title 16 and disclose such information to any law enforcement agency or prosecuting attorney. Notwithstanding the provisions of this subparagraph, Code Section 16-13-60 shall control the access to or release of information.

(D) The executive director or the director of the Georgia Drugs and Narcotics Agency may also disclose to any person or entity information concerning the existence of any investigation for unlicensed practice being conducted against any person who is neither licensed nor an applicant for licensure by the board;

(28) To administer oaths, subpoena witnesses and documentary evidence, including relevant medical records, and take testimony in all matters relating to its duties;

(29) To conduct hearings, reviews, and other proceedings according to Chapter 13 of Title 50;

(30) To have the cognizant member of the board conduct investigative interviews in conjunction with the Georgia Drugs and Narcotics Agency and thereafter to report his or her findings, with recommendations, to the board. In order to obtain a nonprejudicial decision, such report and recommendations shall not disclose the identity of the subject of the investigation. The cognizant member shall not vote on matters which he or she has presented to the board as the cognizant member;

(31) To issue cease and desist orders to stop the unlicensed practice of pharmacy or other professions licensed, certified, or permitted under this chapter and impose penalties for such violations;

(32) To refer cases for criminal prosecution or injunctive relief to appropriate prosecuting attorneys or other law enforcement authorities of this state, another state, or the United States;

(33) To release investigative or applicant files to another enforcement agency or lawful licensing authority in another state;

(34) To sue and be sued in a court of competent jurisdiction;

(35) To enter into contracts;

(36) To assess fines for violations of this chapter or board rules; and

(37) To set all reasonable fees by adoption of a schedule of fees approved by the board. The board shall set such fees sufficient to cover costs of operation.

(b) Proceedings by the board in the exercise of its authority to cancel, suspend, or revoke any license issued under the terms of this chapter shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." In all such proceedings, the board shall have authority to compel the attendance of witnesses and the production of any book, writing, or document upon the issuance of a subpoena therefor signed by the secretary of the board. In any hearing in which the fitness of a licensee or applicant to practice pharmacy or another business or profession licensed by the board under this chapter is in question, the board may exclude all persons from its deliberation of the appropriate action to be taken and may, when it deems it necessary, speak to a licensee or applicant and his or her legal counsel in private.

(c) The board shall have such other duties, powers, and authority as may be necessary to the enforcement of this chapter and to the enforcement of board rules made pursuant thereto which shall include, but are not limited to, the following:

(1) The board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board;

(2) The board may place under seal all drugs or devices that are owned by or in the possession, custody, or control of a licensee at the time his or her license is suspended or revoked or at the time the board refuses to renew his or her license. Except as otherwise provided in this Code section, drugs or devices so sealed shall not be disposed of until appeal rights under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," have expired, or an appeal filed pursuant to such chapter has been determined. The court involved in an appeal filed pursuant to such chapter may order the board, during the pendency of the appeal, to sell sealed drugs that are perishable. The proceeds of such a sale shall be deposited with that court;

(3) Except as otherwise provided to the contrary, the board shall exercise all of its duties, powers, and authority in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";

(4) In addition to the fees specifically provided for in this chapter, the board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized

by this chapter or the rules and regulations promulgated by the board. Such services rendered shall include but not be limited to the following:

(A) Issuance of duplicate certificates or identification cards;

(B) Certification of documents;

(C) License transfer;

(D) Examination administration to a licensure applicant; and

(E) Examination materials; and

(5) Cost recovery.

(A) For any order issued in resolution of a disciplinary proceeding before the board, the board may direct any licensee found guilty of a charge involving a violation of any drug laws or rules to pay to the board a sum not to exceed the reasonable costs of the investigation and prosecution of the case and, in any case, not to exceed $25,000.00. The costs to be assessed shall be fixed by the board and the costs so recovered shall be paid to the state treasury; and

(B) In the case of a pharmacy or wholesale distributor, the order issued may be made to the corporate owner, if any, and to any pharmacist, officer, owner, or partner of the pharmacy or wholesale distributor who is found to have had knowledge of or have participated knowingly in one or more of the violations set forth in this Code section.

Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for payment in the court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the board may have as to any person directed to pay costs. In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment. (Code 1981, § 26-4-28, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 1999, p. 277, §§ 2, 3; Ga. L. 2007, p. 229, § 1/HB 330; Ga. L. 2011, p. 308, § 6/HB 457; Ga. L. 2011, p. 541, § 1/SB 81; Ga. L. 2012, p. 775, § 26/HB 942; Ga. L. 2013, p. 141, § 26/HB 79; Ga. L. 2013, p. 192, § 1-9/HB 132; Ga. L. 2015, p. 1360, § 1/HB 511.)

The 2015 amendment, effective July 1, 2015, in paragraph (a)(12.1), added the subparagraph (A) and (C) designations and added subparagraph (a)(12.1)(B).

ARTICLE 5

PRESCRIPTION DRUGS

26-4-80. License required for practice of pharmacy; dispensing of prescription drugs; prescription drug orders; electronically transmitted drug orders; refills; Schedule II controlled substance prescriptions.

(a) All persons engaging in the practice of pharmacy in this state must be licensed by the board.

(b) Prescription drugs shall be dispensed only pursuant to a valid prescription drug order. A pharmacist shall not dispense a prescription which the pharmacist knows or should know is not a valid prescription. A pharmacist shall have the same corresponding liability for prescriptions as an issuing practitioner as set forth in 21 C.F.R. Part 1304 as such regulation exists on January 1, 2013. Valid prescription drug orders shall include those issued by a physician, dentist, podiatrist, veterinarian, or other person licensed, registered, or otherwise authorized under the laws of this state, or of any state or territory of the United States, to prescribe dangerous drugs or controlled substances or both.

(c) A prescription drug order may be accepted by a pharmacist or pharmacy intern or extern in written form, orally, via an electronic visual image prescription drug order, or via an electronic data prescription drug order as set forth in this chapter or as set forth in regulations promulgated by the board. Provisions for accepting a prescription drug order for a Schedule II controlled substance are set forth in subsection (l) of this Code section, the board's regulations, or the regulations of the United States Drug Enforcement Administration in 21 C.F.R. 1306. Electronic prescription drug orders shall either be an electronic visual image of a prescription drug order or an electronic data prescription drug order and shall meet the requirements set forth in regulations promulgated by the board. A hard copy prescription prepared by a practitioner or a practitioner's agent, which bears an electronic visual image of the practitioner's signature and is not sent by facsimile, must be printed on security paper. Prescriptions transmitted either electronically or via facsimile shall meet the following requirements:

(1) Electronically transmitted prescription drug orders shall be transmitted by the practitioner or, in the case of a prescription drug order to be transmitted via facsimile, by the practitioner or the practitioner's agent under supervision of the practitioner, to the pharmacy of the patient's choice with no intervening person or intermediary having access to the prescription drug order. For purposes of this paragraph, "intervening person or intermediary"

shall not include a person who electronically formats or reconfigures data or information for purposes of integrating into and between computer or facsimile systems of practitioners and pharmacists;

(2) Prescription drug orders transmitted by facsimile or computer shall include:

(A) In the case of a prescription drug order for a dangerous drug, the complete name and address of the practitioner;

(B) In the case of a prescription drug order for a controlled substance, the complete name, address, and DEA registration number of the practitioner;

(C) The telephone number of the practitioner for verbal confirmation;

(D) The name and address of the patient;

(E) The time and date of the transmission;

(F) The full name of the person transmitting the order; and

(G) The signature of the practitioner in a manner as defined in regulations promulgated by the board or, in the case of a controlled substances prescription, in accordance with 21 C.F.R. 1301.22;

(3) An electronically transmitted, issued, or produced prescription drug order which meets the requirements of this Code section shall be deemed the original order;

(4) The pharmacist shall exercise professional judgment regarding the accuracy and authenticity of any electronically transmitted, issued, or produced prescription drug order consistent with federal and state laws and rules and regulations adopted pursuant to the same;

(5) An electronically encrypted, issued, or produced prescription drug order transmitted from a practitioner to a pharmacist shall be considered a highly confidential transaction and such transmission, issuance, or production shall not be compromised by unauthorized interventions, control, change, altering, manipulation, or accessing patient record information by any other person or party in any manner whatsoever between the time after the practitioner has electronically transmitted, issued, or produced a prescription drug order and such order has been received by the pharmacy of the patient's choice. For purposes of this paragraph, "unauthorized interventions, control, change, altering, manipulation, or accessing patient record information" shall not include electronic formatting or reconfiguring of data or information for purposes of integrating into and between computer or facsimile systems of practitioners and pharmacists;

(6) Any pharmacist who transmits, receives, or maintains any prescription or prescription refill either orally, in writing, or electronically shall ensure the security, integrity, and confidentiality of the prescription and any information contained therein; and

(7)(A) The board shall promulgate rules and regulations under this Code section for institutional settings such as hospital pharmacies, nursing home pharmacies, clinic pharmacies, or pharmacies owned or operated directly by health maintenance organizations.

(B) The rules established pursuant to subparagraph (A) of this paragraph shall specifically authorize hospital pharmacies to use remote order entry when:

(i) The licensed pharmacist is not physically present in the hospital, the hospital pharmacy is closed, and a licensed pharmacist will be physically present in the hospital pharmacy within 24 hours;

(ii) At least one licensed pharmacist is physically present in the hospital pharmacy and at least one other licensed pharmacist is practicing pharmacy in the hospital but not physically present in the hospital pharmacy; or

(iii) At least one licensed pharmacist is physically present in a hospital within this state which remotely serves only on weekends not more than four other hospitals under the same ownership or management which have an average daily census of less than 12 acute patients.

(C) Before a hospital may engage in remote order entry as provided in this paragraph, the director of pharmacy of the hospital shall submit to the board written policies and procedures for the use of remote order entry. The required policies and procedures to be submitted to the board shall be in accordance with the American Society of Health-System Pharmacists and shall contain provisions addressing quality assurance and safety, mechanisms to clarify medication orders, processes for reporting medication errors, documentation and record keeping, secure electronic access to the hospital pharmacy's patient information system and to other electronic systems that the on-site pharmacist has access to, access to hospital policies and procedures, confidentiality and security, and mechanisms for real-time communication with prescribers, nurses, and other caregivers responsible for the patient's health care.

(D) If the board concludes that the hospital's actual use of remote order entry does not comply with this paragraph or the

rules adopted pursuant to this chapter, it may issue a cease and desist order after notice and hearing.

(d) Information contained in the patient medication record or profile shall be considered confidential information as defined in this title. Confidential information may be released to the patient or the patient's authorized representative, the prescriber or other licensed health care practitioners then caring for the patient, another licensed pharmacist, the board or its representative, or any other person duly authorized to receive such information. In accordance with Code Section 24-12-1, confidential information may be released to others only on the written release of the patient, court order, or subpoena.

(e) Except as authorized under subsection (j) of this Code section, a prescription may not be refilled without authorization. When refills are dispensed pursuant to authorization contained on the original prescription or when no refills are authorized on the original prescription but refills are subsequently authorized by the practitioner, the refill authorization shall be recorded on the original prescription document and the record of any refill made shall be maintained on the back of the original prescription document or on some other uniformly maintained record and the dispensing pharmacist shall record the date of the refill, the quantity of the drug dispensed, and the dispensing pharmacist's initials; provided, however, that an original prescription for a Schedule III, IV, or V controlled substance which contains no refill information may not be authorized to be refilled more than five times or after six months from the date of issuance, whichever occurs first. Authorization for any additional refill of a Schedule III, IV, or V controlled substance prescription in excess of five refills or after six months from the date of issuance of the prescription shall be treated as a new prescription.

(f)(1) When filling a prescription or refilling a prescription which may be refilled, the pharmacist shall exercise professional judgment in the matter. No prescription shall be filled or refilled with greater frequency than the approximate interval of time that the dosage regimen ordered by the practitioner would indicate, unless extenuating circumstances are documented which would justify a shorter interval of time before the filling or refilling of the prescription.

(2) Notwithstanding paragraph (1) of this subsection, in order to prevent unintended interruptions in drug therapy for topical ophthalmic products:

(A) A pharmacist shall be authorized, without obtaining subsequent authorization from the practitioner or obtaining a new prescription from the practitioner, to permit refills at 70 percent of the predicted days of use; and

(B) At the patient's request, a practitioner shall be permitted to authorize refills earlier than 70 percent of the predicted days of use.

This paragraph shall apply to refills purchased through retail pharmacies and mail order sources.

(g) The pharmacist who fills or refills a prescription shall record the date of dispensing and indicate the identity of the dispensing pharmacist on the prescription document or some other appropriate and uniformly maintained record. If this record is maintained on the original prescription document, the original dispensing and any refills must be recorded on the back of the prescription.

(h) When the patient no longer seeks personal consultation or treatment from the practitioner, the practitioner and patient relationship is terminated. A prescription becomes invalid after the practitioner and patient relationship is terminated which is defined as a reasonable period of time not to exceed six months in which the patient could have established a new practitioner and patient relationship as established by the board through the promulgation of rules and regulations.

(i) All prescription drug orders must bear the signature of the prescribing practitioner as defined in Code Section 16-13-21. Physician assistants must comply with all applicable laws regarding signatures. Further, the nature of such signature must meet the requirements set forth in regulations promulgated by the board. A physically applied signature stamp is not acceptable in lieu of an original signature. Except as otherwise provided for in this subsection, when an oral prescription drug order or the oral authorization for the refilling of a prescription drug order is received which has been transmitted by someone other than the practitioner, the name of the individual making the transmission and the date, time, and location of the origin of the transmission must be recorded on the original prescription drug order or other record by the pharmacist receiving the transmission. No one other than the practitioner or an agent authorized by the practitioner shall transmit such prescriptions in any manner. In institutional settings such as hospital pharmacies, nursing home pharmacies, clinic pharmacies, or pharmacies owned or operated directly by health maintenance organizations, the name of the individual making the transmission is not required to be placed on the order.

(j) A pharmacist licensed by the board may dispense up to a 72 hour supply of a prescribed medication in the event the pharmacist is unable to contact the practitioner to obtain refill authorization, provided that:

(1) The prescription is not for a controlled substance;

(2) In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort;

(3) The dispensing pharmacist notifies the practitioner or his or her agent of the dispensing within seven working days after the prescription is refilled pursuant to this subsection;

(4) The pharmacist properly records the dispensing as a separate nonrefillable prescription. Said document shall be filed as is required of all other prescription records. This document shall be serially numbered and contain all information required of other prescriptions. In addition it shall contain the number of the prescription from which it was refilled;

(5) The pharmacist shall record on the patient's record and on the new document the circumstances which warrant such dispensing; and

(6) The pharmacist does not employ this provision regularly for the same patient on the same medication.

(k) All out-patient prescription drug orders which are dispensed shall be appropriately labeled in accordance with the rules and regulations promulgated by the board as follows:

(1) Before an out-patient prescription drug is released from the dispensing area, the prescription drug shall bear a label containing the name and address of the pharmacy, a prescription number, the name of the prescriber, the name of the patient, directions for taking the medication, the date of the filling or refilling of the prescription, the initials or identifying code of the dispensing pharmacist, and any other information which is necessary, required, or, in the pharmacist's professional judgment, appropriate; and

(2) The pharmacist who fills an out-patient prescription drug order shall indicate the identity of the dispensing pharmacist on the label of the prescription drug. Identification may be made by placing initials on the label of the dispensed drug. The label shall be affixed to the outside of the container of the dispensed drug by means of adhesive or tape or any other means which will assure that the label remains attached to the container.

(l) A Schedule II controlled substance prescription drug order in written form signed in indelible ink by the practitioner may be accepted by a pharmacist and the Schedule II controlled substance may be dispensed by such pharmacist. Other forms of Schedule II controlled substance prescription drug orders may be accepted by a pharmacist and the Schedule II controlled substance may be dispensed by such pharmacist in accordance with regulations promulgated by the board and in accordance with DEA regulations found in 21 C.F.R. 1306. A pharmacist shall require a person picking up a Schedule II controlled substance prescription to present a government issued photo identifi-

cation document or such other form of identification which documents legibly the full name of the person taking possession of the Schedule II controlled substance subject to the rules adopted by the board.

(m) No licensee nor any other entity shall be permitted to provide facsimile machines or equipment, computer software, technology, hardware, or supplies related to the electronic transmission of prescription drug orders to any practitioner which restricts such practitioner from issuing prescription drug orders for certain prescription drugs or restricts a patient from choosing the retail pharmacy to which an electronic prescription drug order may be transmitted.

(n) Institutions including, but not limited to, hospitals, long-term care facilities, and inpatient hospice facilities which utilize electronic medical record systems that meet the information requirements for prescription drug orders for patients pursuant to this Code section shall be considered to be in compliance with this Code section.

(o) Nothing in this Code section shall be construed to prohibit any insurance company, hospital or medical service plan, health care provider network, health maintenance organization, health care plan, employer, or other similar entity providing health insurance from offering incentives to pharmacies, pharmacists, and practitioners that accept or utilize electronic data prescription drug orders.

(p) Pharmacists dispensing prescriptions pursuant to a remote automated medication system in accordance with the rules and regulations adopted by the State Board of Pharmacy pursuant to paragraph (12.1) of subsection (a) of Code Section 26-4-28 shall be considered in compliance with this Code section. (Code 1981, § 26-4-80, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 2004, p. 738, §§ 4, 5; Ga. L. 2006, p. 444, § 2/HB 246; Ga. L. 2009, p. 859, § 3/HB 509; Ga. L. 2011, p. 99, § 39/HB 24; Ga. L. 2011, p. 308, § 7/HB 457; Ga. L. 2011, p. 659, § 4/SB 36; Ga. L. 2012, p. 1092, § 1B/SB 346; Ga. L. 2013, p. 127, § 3/HB 209; Ga. L. 2013, p. 141, § 26/HB 79; Ga. L. 2013, p. 736, § 1/SB 216; Ga. L. 2015, p. 585, § 3/SB 194.)

The 2015 amendment, effective July 1, 2015, designated the previously existing provisions of subsection (f) as paragraph (f)(1), and, in the second sentence of that paragraph, substituted "practitioner" for "prescriber"; and added paragraph (f)(2).

26-4-81. Substitution of generic drugs or interchangeable biological products for brand name drugs and prescribed biological products.

(a) In accordance with this Code section, a pharmacist may substitute:

(1) A drug with the same generic name in the same strength, quantity, dose, and dosage form as the prescribed brand name drug product which is, in the pharmacist's reasonable professional opinion, pharmaceutically equivalent; or

(2) A biological product with an interchangeable biological product.

(b) If a practitioner of the healing arts prescribes:

(1) A drug by its generic name, the pharmacist shall dispense the lowest retail priced drug product which is in stock and which is, in the pharmacist's reasonable professional opinion, pharmaceutically equivalent; or

(2) A biological product by its nonproprietary name, the pharmacist shall dispense the lowest retail priced interchangeable biological product which is in stock.

(c) Substitutions as provided for in subsections (a) and (b) of this Code section are authorized for the express purpose of making available to the consumer the lowest retail priced:

(1) Drug product which is in stock and which is, in the pharmacist's reasonable professional opinion, both therapeutically equivalent and pharmaceutically equivalent; or

(2) Interchangeable biological product which is in stock.

(d)(1) Whenever a substitution is made, the pharmacist shall record on the original prescription the fact that there has been a substitution and the identity of the dispensed drug product or interchangeable biological product and its manufacturer. Such prescription shall be made available for inspection by the board or its representative in accordance with the rules of the board.

(2) If a pharmacist substitutes a generic drug product for a brand name prescribed drug product when dispensing a prescribed medication, the brand name and the generic name of the drug product, with an explanation of "generic for (insert name of brand name prescribed drug product)" or similar language to indicate substitution has occurred, must appear on the prescription label and be affixed to the container or an auxiliary label, unless the prescribing practitioner indicated that the name of the drug may not appear upon the prescription label; provided, however, that this paragraph shall not apply to medication dispensed for in-patient hospital services or to medications in specialty packaging for dosing purposes as defined by the board.

(3) If a pharmacist substitutes an interchangeable biological product for a prescribed biological product when dispensing a prescribed

medication, the name of the interchangeable biological product, with an explanation of "interchangeable biological product for (insert name of prescribed biological product)" or similar language to indicate substitution has occurred, must appear on the prescription label and be affixed to the container or an auxiliary label, unless the prescribing practitioner indicated that the name of the biological product may not appear upon the prescription label; provided, however, that this paragraph shall not apply to biological products dispensed for in-patient hospital services, to hospital administered biological products for outpatients, or to biological products in specialty packaging for dosing purposes as defined by the board. This paragraph shall apply to hospital retail pharmacies and to any biological products dispensed by a hospital for a patient's use or administration at home.

(e) The substitution of any drug or biological product by a registered pharmacist pursuant to this Code section does not constitute the practice of medicine.

(f) A patient for whom a prescription drug or biological product order is intended may instruct a pharmacist not to substitute a generic name drug in lieu of a brand name drug or an interchangeable biological product in lieu of a prescribed biological product.

(g) A practitioner of the healing arts may instruct the pharmacist not to substitute a generic name drug in lieu of a brand name drug or an interchangeable biological product in lieu of a prescribed biological product by including the words "brand necessary" in the body of the prescription. When a prescription is a hard copy prescription drug or biological product order, such indication of brand necessary must be in the practitioner's own handwriting and shall not be printed, applied by rubber stamp, or any such similar means. When the prescription is an electronic prescription drug or biological product order, the words "brand necessary" are not required to be in the practitioner's own handwriting and may be included on the prescription in any manner or by any method. When a practitioner has designated "brand necessary" on an electronic prescription drug or biological product order, a generic drug or interchangeable biological product shall not be substituted without the practitioner's express consent, which shall be documented by the pharmacist on the prescription and by the practitioner in the patient's medical record.

(h) Within 48 hours, excluding weekends and holidays, following the dispensing of a biological product, the dispensing pharmacist or the pharmacist's designee shall communicate to the prescriber the specific product provided to the patient, including the name of the biological product and the manufacturer. The communication shall be conveyed by making an entry into an interoperable electronic medical records

system or through electronic prescribing technology or a pharmacy record that is electronically accessible by the prescriber. Otherwise, the pharmacist shall communicate the biological product dispensed to the prescriber by using facsimile, telephone, electronic transmission, or other prevailing means, provided that communication shall not be required where:

(1) There is no interchangeable biological product approved by the federal Food and Drug Administration for the prescribed product; or

(2) A refill prescription is not changed from the product dispensed on the prior filling of the prescription.

(i) The board shall maintain a link on its website to the current list of all biological products determined by the federal Food and Drug Administration to be interchangeable with a specific biological product.

(j) Code Section 26-4-118, "The Pharmacy Audit Bill of Rights," shall apply to biological products and interchangeable biological products dispensed pursuant to this Code section. (Code 1981, § 26-4-81, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 2004, p. 738, § 6; Ga. L. 2009, p. 8, § 26/SB 46; Ga. L. 2010, p. 266, § 5/SB 195; Ga. L. 2010, p. 554, § 1/HB 194; Ga. L. 2015, p. 1209, § 2/SB 51.)

The 2015 amendment, effective July 1, 2015, in subsections (a), (b), and (c), added the paragraph (1) designation, added paragraph (2), and made related punctuation and grammatical changes; inserted "or interchangeable biological product" in the first sentence of paragraph (d)(1); added paragraph (d)(3); inserted "or biological product" in subsections (e), (f), and (g); inserted "or an interchangeable biological product in lieu of a prescribed biological product" in subsections (f) and (g); inserted "or interchangeable biological product" near the end of subsection (g); and added subsections (h) through (j).

ARTICLE 6

PHARMACIES

26-4-116.1. Licensed health practitioners authorized to prescribe auto-injectable epinephrine for schools; pharmacists authorized to fill prescriptions.

(a) A physician licensed to practice medicine in this state, an advanced practice registered nurse acting pursuant to the authority of Code Section 43-34-25, and a physician assistant acting pursuant to the authority of subsection (e.1) of Code Section 43-34-103 may prescribe auto-injectable epinephrine in the name of a public or private school for use in accordance with Code Section 20-2-776.2 and in accordance with protocol specified by such physician, advanced practice registered nurse, or physician assistant.

(b) A physician licensed to practice medicine in this state, an advanced practice registered nurse acting pursuant to the authority of Code Section 43-34-25, and a physician assistant acting pursuant to the authority of subsection (e.l) of Code Section 43-34-103 may prescribe auto-injectable epinephrine in the name of an authorized entity in accordance with Code Section 31-1-14.

(c) A pharmacist may dispense auto-injectable epinephrine pursuant to a prescription issued in accordance with subsection (a) or (b) of this Code section. (Code 1981, § 26-4-116.1, enacted by Ga. L. 2013, p. 1039, § 2/HB 337; Ga. L. 2015, p. 312, § 1/SB 126.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of subsection (b) for the former provisions, which read: "A pharmacist may dispense auto injectable epinephrine pursuant to a prescription issued in accordance with subsection (a) of this Code section."; and added subsection (c).

26-4-116.3. Licensed health practitioners authorized to prescribe levalbuterol sulfate or abuterol sulfate for schools; pharmacists authorized to fill prescriptions.

(a) A physician licensed to practice medicine in this state, an advanced practice registered nurse acting pursuant to the authority of Code Section 43-34-25, and a physician assistant acting pursuant to the authority of subsection (e.1) of Code Section 43-34-103 may prescribe levalbuterol sulfate or albuterol sulfate in the name of a public or private school for use in accordance with Code Section 20-2-776.3.

(b) A pharmacist may dispense levalbuterol sulfate or albuterol sulfate pursuant to a prescription issued in accordance with subsection (a) of this Code section. (Code 1981, § 26-4-116.3, enacted by Ga. L. 2015, p. 312, § 1A/SB 126.)

Effective date. — This Code section became effective July 1, 2015.

26-4-118. Pharmacy Audit Bill of Rights; recoupment of disputed funds; appeals process for unfavorable reports; final audit report; investigative audits based on criminal offenses.

(a) This Code section shall be known and may be cited as "The Pharmacy Audit Bill of Rights."

(b) Notwithstanding any other law, when an audit of the records of a pharmacy is conducted by a managed care company, insurance company, third-party payor, pharmacy benefits manager, any entity licensed by the Department of Insurance, the Department of Community Health under Article 7 of Chapter 4 of Title 49, any entity that

represents such companies, groups, or department, or a private person bringing a claim pursuant to Article 7B of Chapter 4 of Title 49, it shall be conducted in accordance with the following bill of rights:

(1) The entity conducting the initial on-site audit must give the pharmacy notice at least 14 days prior to conducting the initial on-site audit for each audit cycle and include in such notice a comprehensive list of claims by prescription number to be audited, although the final two digits may be omitted;

(2) Any audit which involves clinical or professional judgment must be conducted by or in consultation with a pharmacist;

(3) Any clerical or record-keeping error, including but not limited to a typographical error, scrivener's error, or computer error, regarding a required document or record shall not in and of itself constitute fraud. No such claim shall be subject to criminal penalties without proof of intent to commit fraud. No recoupment of the cost of drugs or medicinal supplies properly dispensed shall be allowed if such error has occurred and been resolved in accordance with paragraph (4) of this subsection; provided, however, that recoupment shall be allowed to the extent that such error resulted in an overpayment, though recoupment shall be limited to the amount overpaid;

(4) A pharmacy shall be allowed at least 30 days following the conclusion of an on-site audit or receipt of the preliminary audit report in which to correct a clerical or record-keeping error or produce documentation to address any discrepancy found during an audit, including to secure and remit an appropriate copy of the record from a hospital, physician, or other authorized practitioner of the healing arts for drugs or medicinal supplies written or transmitted by any means of communication if the lack of such a record or an error in such a record is identified in the course of an on-site audit or noticed within the preliminary audit report;

(5) A pharmacy may use the records of a hospital, physician, or other authorized practitioner of the healing arts for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug;

(6) A finding of an overpayment or underpayment may be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs; however, recoupment of claims must be based on the actual overpayment or underpayment unless the projection for overpayment or underpayment is part of a settlement as agreed to by the pharmacy;

(7) Each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity;

(8) The period covered by an audit may not exceed two years from the date the claim was submitted to or adjudicated by a managed care company, insurance company, third-party payor, pharmacy benefits manager, any entity licensed by the Department of Insurance, the Department of Community Health under Article 7 of Chapter 4 of Title 49, any entity that represents such companies, groups, or department;

(9) An audit may not be initiated or scheduled during the first seven calendar days of any month due to the high volume of prescriptions filled during that time unless otherwise consented to by the pharmacy;

(10) The preliminary audit report must be delivered to the pharmacy within 120 days after conclusion of the audit. A final audit report shall be delivered to the pharmacy within six months after receipt of the preliminary audit report or final appeal, as provided for in subsection (c) of this Code section, whichever is later; and

(11) The audit criteria set forth in this subsection shall apply only to audits of claims submitted for payment after July 1, 2006. Notwithstanding any other provision in this subsection, the agency conducting the audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties for audits.

(c) Recoupments of any disputed funds shall only occur after final internal disposition of the audit, including the appeals process as set forth in subsection (d) of this Code section.

(d) Each entity conducting an audit shall establish an internal appeals process under which a pharmacy shall have at least 30 days from the delivery of the preliminary audit report to appeal an unfavorable preliminary audit report to the entity. If, following the appeal, the entity finds that an unfavorable audit report or any portion thereof is unsubstantiated, the entity shall dismiss the audit report or such portion without the necessity of any further proceedings.

(e) Each entity conducting an audit shall provide a copy of the final audit report, after completion of any review process, to the plan sponsor at its request or in an alternate format.

(f) This Code section shall not apply to any investigative audit which involves fraud, willful misrepresentation, or abuse, including without limitation investigative audits under Article 7 of Chapter 4 of Title 49, Code Section 33-1-16, or any other statutory provision which authorizes investigations relating to insurance fraud.

(g) The provisions of paragraph (3) of subsection (b) of this Code section shall not apply to the Department of Community Health conducting audits under Article 7 of Chapter 4 of Title 49.

(h) The entity conducting the audit may not pay the agent or employee who is conducting the audit based on a percentage of the amount recovered.

(i) The Commissioner of Insurance shall have enforcement authority over this Code section and shall have the authority granted pursuant to Chapter 64 of Title 33, relating to the regulation and licensure of pharmacy benefits managers. (Code 1981, § 26-4-118, enacted by Ga. L. 2006, p. 198, § 1/HB 1371; Ga. L. 2009, p. 8, § 26/SB 46; Ga. L. 2013, p. 615, § 1/HB 179; Ga. L. 2015, p. 337, § 1/HB 470.)

The 2015 amendment, effective July 1, 2015, in subsection (b), in the introductory language, inserted "pharmacy benefits manager, any entity licensed by the Department of Insurance," near the middle and inserted "or a private person bringing a claim pursuant to Article 7B of Chapter 4 of Title 49," near the end; in paragraph (b)(1), substituted "14 days" for "one week" near the middle and inserted "and include in such notice a comprehensive list of claims by prescription number to be audited, although the final two digits may be omitted" near the end; in paragraph (b)(3), substituted "shall not" for "may not" in the first sentence, and substituted "though recoupment shall be limited to the amount overpaid" for "underpayment, or improper dispensing of drugs or medicinal supplies." at the end; in paragraph (b)(8), inserted "pharmacy benefits manager, any entity licensed by the Department of Insurance," near the middle and deleted "or" following "Title 49," near the end; inserted "internal" in the first sentence in subsection (d); inserted "at its request or in an alternate format" in subsection (e); inserted a comma following "abuse" in subsection (f); and added subsections (h) and (i).

ARTICLE 12

PRESCRIPTION MEDICATION INTEGRITY ACT

Delayed effective date. — Ga. L. 2007, p. 463, § 2/SB 205, provides that this article becomes effective only when funds are specifically appropriated for purposes of this Act in an Appropriations Act making specific reference to that Act. Funds were not appropriated at the 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, or 2015 session of the General Assembly.